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BOMBAY BRANCH
OF THE
ROYAL ASIATIC SOCIETY
TOWN HALL, BOMBAY.

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THE

UNREPEALED ACTS

OF THE

GOVERNOR-GENERAL IN COUNCIL.

THIRD EDITION.

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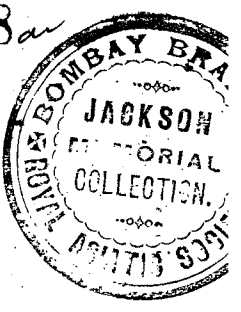
BY

D. E. CRANENBURGH,

PLEADER.



VOLUME II.,

CONTAINING ACTS FROM 1875 TO 1882.

Calcutta:

PRINTED AND PUBLISHED BY D. E. CRANENBURGH,
AT HIS "LAW-PUBLISHING PRESS,"
NO. 57, BOW BAZAR STREET.

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PREFACE.

THE unrepealed Acts of the Supreme Council as published in this edition are comprised in three volumes. The first volume contains Acts from 1834 to 1874; the second volume contains Acts from 1875 to 1882; while the third volume contains Acts from 1883 to 1893.

To enhance the usefulness of this volume, I have prefixed a Chronological Table, showing how far each Act from 1875 to 1882 is repealed, amended, or otherwise altered, and at what page each unrepealed Act is printed; and I have added a general index, which refers to the subject-matter of each Act.

The Merchant Seamen's Act (I. of 1859) and a few other Acts relating to seamen have been omitted, as a consolidating measure is now before the Indian Legislative Council.

D. E. CRANENBURGH.

April 5, 1894.

THE UNREPEALED ACTS

OF THE

GOVERNOR-GENERAL IN COUNCIL

FROM 1875 TO 1882.

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CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

1875—1882.

[NOTE.—(*a*) Where an Act has been repealed in part, and the residue has been subsequently repealed, the latter repeal only has, as a rule, been noted.

(*b*) In the case of (*1*) Acts which have been wholly repealed or are spent, and (*2*) Acts which apply to the Straits Settlements only, and are therefore not in force within the present limits of British India, the entries in the third and fourth columns are printed in italics.]

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1875	I.	*Distresses, Presidency-towns*	*Rep. by XV. of 1882.*
	II.	*Law Reports*	*Rep. by XVIII. of 1875.*
	III.	*Correcting Act XVI. of 1874*	*Rep. by XII. of 1876.*
	IV.	*Merchant Shipping*	*Rep. by V. of 1883.*
	V.	Unattested Sepoys	Printed at p. 1.
	VI.	Loan to Sir Jamsetjee Jeejeebhoy.	Not reprinted.
	VII.	Fisheries, Burma	Rep. in part by XII. of 1876, s. 1. Printed at p. 1.
	VIII.	*Inland Customs*	*Rep. by XII. of 1882.*
	IX.	Majority	Printed at p 5.
	X.	Criminal Procedure, High Courts.	Rep. (except s. 144 and part of s. 146) by X. of 1882. Ss. 144 and 146 printed at p. 6.
	XI.	*Salt, Madras*	*Rep. by XVIII. of 1877.*
	XII.	*Ports and Port-dues*	*Rep. by X. of 1889.*
	XIII.	Probates and Letters of Administration.	Amended by II. of 1877. Rep. in part by XII. of 1891. Printed at p. 7.
	XIV.	*Punjab Judicial Administration.*	*Rep. by XVI. of 1887.*
	XV.	Amending Punjab Laws Act.	Rep. in part by XII. of 1891. Printed at p. 8.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1875	XVI.	*Tariff*	*Rep. by XI. of 1882.*
	XVII.	*Courts, Burma*	*Rep. by XI. of 1889.*
	XVIII.	Law Reports.	Rep. in part by XII. of 1876. Printed at p. 9.
	XIX.	*Punjab Chief Court*	*Rep. by XVII. of 1877.*
	XX.	Central Provinces Laws	Rep. in part by VI. of 1878; III. of 1879; IV. of 1882; X. of 1882; XII. of 1891. Amended by II. of 1879; XIII. of 1889; VIII. of 1890. Printed at p. 9.
	XXI.	*Calcutta University. Honorary Degrees.*	*Rep. by I. of 1884.*
1876	I.	*Telegraphs*	*Rep. by XIII. of 1885.*
	II.	Burma Land and Revenue	Rep. in part by II. of 1880; XII. of 1882. Printed at p. 14.
	III.	*Burma Labour Law*	*Rep. by VII. of 1883.*
	IV.	*Bengal Revenue Agents*	*Rep. by XVIII. of 1879.*
	V.	Reformatory Schools	Printed at p. 29.
	VI.	Chutiá Nágpur Encumbered Estates.	Amended by V. of 1884. Applied to the Deo Estate with modifications by IX. of 1886. Printed at p. 34.
	VII.	Extending and amending Act XXVII. of 1871 (Criminal Tribes Act).	Printed at p. 41.
	VIII.	*Native Passenger Ships*	*Rep. by X. of 1887.*
	IX.	Native Coinage	Printed at p. 42.
	X.	Bombay Revenue Jurisdiction	Rep. in part and amended by— XV. of 1880; XII. of 1891. Amended by XVI. of 1877. Printed at p. 44.
	XI.	Presidency Banks	Rep. in part and amended by V. of 1879. Printed at p. 50.
	XII.	*Obsolete Enactments*	*Rep. by XII. of 1891.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1876	XIII.	Merchant Seamen	Not reprinted, as a consolidating Bill is before the Council.
	XIV.	*Incumbered Estates, Sindh*	*Rep. by XX. of 1881.*
	XV.	Municipal Debentures, Bombay.	Rep. in part by I. of 1879. Printed at p. 74.
	XVI.	Amending Stage Carriages Act, XVI. of 1861.	Printed at p. 75.
	XVII.	Land-revenue, Oudh	Rep. in part by XIII. of 1882. Rep. in part and amended by— XIV. of 1878, s. 4; XX. of 1890, ss. 12 to 34; XII. of 1891. Printed at p. 76.
	XVIII.	Laws, Oudh	Rep. in part by VI. of 1878; III. of 1879, s. 9; XIII. of 1879; IV. of 1882; X. of 1882; XXII. of 1886; XIII. of 1889; VIII. of 1890; XX. of 1890, s. 35. Rep. in part and amended by— XIV. of 1878, s. 5; XII. of 1891. Printed at p. 114.
	XIX.	Dramatic Performances	Extended to Upper Burma with modifications by XX. of 1886, ss. 6 and 7. Printed at p. 126.
	XX.	Bhaunagar	Printed at p. 129.
	XXI.	Amending Land Improvement Act.	Rep. (in places in which the Act has been declared in force) by XIX. of 1883. Rep. in part by XII. of 1891, Sch. I., so far as it applies to the Andaman and Nicobar Islands and the Pargana of Manpur. Not reprinted.
	XXII.	Indian Museum (Calcutta)	Amended by IV. of 1887. Printed at p. 132.
	XXIII.	Opium	Rep. (in local areas in which the Act has been declared in force) by I. of 1878. Amended by VI. of 1877. Rep. in part by XII. of 1891. Not reprinted.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1877	I.	Specific Relief	Rep. in part (in certain localities) by—II. of 1882; IV. of 1882. Rep. in part by XII. of 1891. Printed at p. 136.
	II.	Amending Act XIII. of 1875 (Probate and Letters of Administration).	Rep. in part by XII. of 1891. Printed at p. 160.
	III.	Registration	Rep. in part (by implication) by X. of 1882, s. 483. Rep. in part by XII. of 1891. Amended by— XII. of 1879, ss. 104 to 107; I. of 1880; XIX. of 1883, s. 12 (*1*) & (*3*); VII. of 1886; VII. of 1888, s. 65; XIII. of 1889; XII. of 1891. Supplemented by IV. of 1882 (as amended by Act III. of 1885). Printed at p. 161.
	IV.	Presidency Magistrates	Rep. (except s. 57) by X. of 1882. S. 57 printed at p. 184.
	V.	*Straits Settlements Emigration.*	*Rep. by XXI. of 1884.*
	VI.	Postponing operation of Opium Act, XXIII. of 1876.	Rep. (locally) by I. of 1878. Rep. in part by XII. of 1891. Not reprinted.
	VII.	*Amending North-Western Provinces Local Rates Act, 1871.*	*Rep. by III. of 1878.*
	VIII.	*Licenses, North-Western Provinces.*	*Rep. by II. of 1878.*
	IX.	Reviving and amending Act XXIII. of 1867 (Murderous Outrages, Punjab).	Omitted as unnecessary, the amendment being embodied in XXIII. of 1867.
	X.	*Civil Procedure Code.*	*Rep. by XIV. of 1882.*
	XI.	Military Lunatics	Rep. in part by XII. of 1891. Printed at p. 185.
	XII.	*Amending Act VI. of 1876 (Chutia Nágpur Encumbered Estates).*	*Rep. by V. of 1884.*
	XIII.	Embankments, Burma	Amended by XI. of 1889. Printed at p. 187.
	XIV.	Incumbered Estates, Broach and Kaira.	Rep. in part and amended by XXI. of 1881. Printed at p. 189.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1877	XV.	Limitation	Rep. in part by XII. of 1891. Rep. in part (Madras, Central Provinces, and Coorg) by V. of 1882. Amended by XII. of 1879, s. 108; VIII. of 1880; V. of 1881, s. 156; IX. of 1887, s. 36; VII. of 1888, s. 66; VI. of 1892. Amended (Punjab) by XVII. of 1877, s. 18. Amended (Upper Burma) by Reg. X. of 1887, s. 4. Printed at p. 190.
	XVI.	Amending Act X. of 1876 (Bombay Revenue Jurisdiction).	Printed at p. 222.
	XVII.*	Courts, Punjab	Rep. (excepts. 18) by XVIII. of 1884. S. 18 makes in XV. of 1877 an amendment which has been embodied.
	XVIII.	*Salt*	*Rep. by XII. of 1882.*
	XIX.	Amending Madras Courts Act, III. of 1873 (Ministerial Officers).	Rep. in part by XII. of 1891. Amended by XXI. of 1885. Rep (Bengal, N.-W. P., and Assam) by XII. of 1887. Printed at p. 223.
1878	I.	Opium	Rep. in part and amended by XII. of 1891. Printed at p. 223.
	II.	*License-tax, Northern India*	*Rep. by II. of 1886.*
	III.	Local Rates, North-Western Provinces.	Rep. in part and amended by XIV. of 1883, ss. 56 to 58. Amended by VIII. of 1879. Printed at p. 229.
	IV.	Local Rates, Oudh	Rep. in part and amended by XIV. of 1883, ss. 59 to 61. Amended by XX. of 1890. Printed at p. 234.
	V.	Local Rates, Punjab	Rep. (in all districts except Simla) by XX. of 1883. Not reprinted.
	VI.	Treasure-trove	Rep. in part by XII. of 1891. Printed at p. 237.
	VII.	Forests	Rep. in part (locally) by VI. of 1879. Amended by V. of 1890; XII. of 1891. Printed at p. 241.

* See Act XIV. of 1884, validating decisions passed under this Act.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1878	VIII.	Sea Customs	Amended by— IX. of 1885, ss. 5 and 6; II. of 1887, ss. 1 to 4; XXI. of 1887; II. of 1888; IV. of 1889, ss. 10 and 11; VIII. of 1889; XIII. of 1890; IX. of 1891; XII. of 1891. Printed at p. 264.
	IX.	*Native Press*	*Rep. by III. of 1882.*
	X.	Local Rates, Central Provinces.	Printed at p. 327.
	XI.	Arms	Rep. in part by XI. of 1882; XII. of 1891. Printed at p. 328.
	XII.	Amending Punjab Laws Act (IV. of 1872).	Rep. in part by X. of 1879; XII. of 1891. Printed at p. 337.
	XIII.	*Distressed Seamen*	*Rep. by V. of 1883.*
	XIV.	Assimilation of Powers (North-Western Provinces and Oudh).	Rep. in part by— XIII. of 1879; XXII. of 1886; XX. of 1890, ss. 21 (2) and 35; XII. of 1891. Printed at p. 338.
	XV.	Hussainábád Endowment	Not reprinted.
	XVI.	*Amending Act IX. of 1878 (Native Press).*	*Rep. by III. of 1882.*
	XVII.	Ferries (Northern India)	Amended by III. of 1886; (N.-W. P. and Oudh) by XIV. of 1883, ss. 64 and 65; (Punjab) by XX. of 1883, ss. 78 and 79; (C. P.) by I. of 1887, ss. 43 and 44. Rep. in part and amended by XII. of 1891. Printed at p. 339.
	XVIII.	*Amending Code of Civil Procedure (Act X. of 1877).*	*Rep. by XII. of 1870.*
1879	I.	Stamps	Rep. in part by V. of 1888; XII. of 1891. Rep. in part and amended by IX. of 1884, s. 10.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1879	I.	Stamps—*contd.*	Amended by I. of 1888; VI. of 1889; XX. of 1890, s. 38; XII. of 1891; VI. of 1894. Printed at p. 347.
	II.	Amending Act XX. of 1875 (Central Provinces Laws).	Printed at p. 390.
	III.	Destruction of Records	Amended by XX. of 1890, s. 38. Amended (Burma) by XVIII. of 1888, s. 7. Rep. in part by XII. of 1891. Printed at p. 390.
	IV.	*Railways*	*Rep. by IX. of 1890.*
	V.	Amending Act XI. of 1876 (Presidency Banks).	Printed at p. 392.
	VI.	Preservation of Elephants	Amended by II. of 1883. Printed at p. 393.
	VII.	*Additional Financial Commissioner, Punjab.*	*Rep. by XII. of 1891.*
	VIII.	Land-revenue (North-Western Provinces).	Rep. in part by XIII. of 1882. Printed at p. 395.
	IX.	Coast-lights (Burma)	Amended by X. of 1889. Omitted, as it is to be repealed by the new Merchant Shipping Bill.
	X.	*Takkávi (Northern India)*	*Rep.* (except as regards the recovery of advances and interest thereon) *by XII. of 1884.*
	XI.	Local Authorities Loans	Amended by XV. of 1885. Printed at p. 398.
	XII.	Amending *Code of Civil Procedure* and Registration and Limitation Acts (Acts X., III., and XV. of 1877).	Rep. in part by XIV. of 1882; XII. of 1891. Printed at p. 400.
	XIII.	Civil Courts (Oudh)	Rep. in part by VII. of 1889; VIII. of 1890. Rep. in part and amended by XIV. of 1891, s. 11. Amended by XX. of 1890, ss. 39 to 42. Printed at p. 402.
	XIV.	Hackney Carriages	Rep. in part by XIII. of 1889. Printed at p. 408.
	XV.	Port Commissioners (Rangoon)	Amended by III. of 1892. Printed at p. 411.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1879	XVI.	Transport of Salt by Sea	Amended by XII. of 1891. Printed at p. 429.
	XVII.	Dekkhan Agriculturists' Relief.	Rep. in part by XII. of 1891. Rep. in part and amended by XXIII. of 1881 and XXII. of 1882. Printed at p. 431.
	XVIII.	Legal Practitioners	Amended by IX. of 1884. Printed at p. 450.
	XIX.	Raipur and Khattra Laws	Rep. in part by XII. of 1891. Printed at p. 463.
	XX.	Glanders and Farcy	Rep. in part and extended to Bombay by XXIV. of 1886. Rep. in part by XII. of 1891. Printed at p. 463.
	XXI.	Foreign Jurisdiction and Extradition.	Rep. in part by X. of 1882. Amended by XII. of 1891. Printed at p. 466.
1880	I.	Religious Societies	Printed at p. 471.
	II.	District Cesses and Rural Police (Lower Burma).	Rep. in part and amended by III. of 1889, ss. 1 (*6*) and 4 (when and where notified). Printed at p. 474.
	III.	*Cantonments*	*Rep. in part by XIII. of 1889.*
	IV.	Portuguese Treaty	Printed at p. 479.
	V.	Boundaries (Lower Burma)	Printed at p. 487.
	VI.	*License Acts Amendment*	*Rep. by II. of 1886.*
	VII.	Merchant Shipping	Rep. in part by XIV. of 1882; X. of 1889; XII. of 1891. Amended by VI. of 1891; XII. of 1891; XVII. of 1891. Not reprinted.
	VIII.	*Correcting clerical error in Limitation Act (XV. of 1877).*	*Rep. by X. of 1888.*
	IX.	Bombay Civil Courts Act Amendment.	Rep. in part by XII. of 1891. Printed at p. 494.
	X.	*Multan District Laws*	*Rep. by XIII. of 1883.*
	XI.	*Burma Courts Act (Additional Recorder of Rangoon).*	*Rep. by XI. of 1889.*
	XII.	Kázis	Printed at p. 494.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1880	XIII.	Vaccination	Printed at p. 496.
	XIV.	*Census*	*Rep. in part by XII. of 1891.*
	XV.	Revenue Jurisdiction (Bombay).	Rep. in part by XII. of 1884; XII. of 1891. Printed at p. 502.
	XVI.	Madras Irrigation and Canal Company.	Printed at p. 502.
1881	I.	Táj Mahál's Pension	Not reprinted.
	II.	Pegu and Sittang Canal	Rep. in part by XII. of 1891. Printed at p. 506.
	III.	*Indian Securities*	*Rep. by XIII. of 1886.*
	IV.	*Port-dues (Madras)*	*Rep by X. of 1889.*
	V.	Probate and Administration	Rep. in part by VII. of 1889; XII. of 1891. Amended by VI. of 1889; II. of 1890; XII. of 1891. Printed at p. 511.
	VI.	District Delegates	Printed at p. 540.
	VII.	Amending Bengal Cess Act (Ben. Act IX. of 1880).	Printed at p. 542.
	VIII.	Petroleum	Rep. by XII. of 1886 (when and where notified). Not reprinted.
	IX.	Administrator-General	Rep. in part by XII. of 1891. Printed at p. 543.
	X.	Coroners	Rep. in part by X. of 1882. Printed at p. 545.
	XI.	Municipal Taxation	Printed at p. 545.
	XII.	Rent (North-Western Provinces).	Rep. in part by XIV. of 1886; IX. of 1887. Amended by— XIV. of 1886; VI. of 1888, s. 10 (2); XII. of 1891. Printed at p. 547.
	XIII.	Fort William	Rep. in part by XII. of 1891. Printed at p. 600.
	XIV.	Benares Family Domains	Rep. in part. by XII. of 1891. Printed at p. 603.
	XV.	Factories	Amended by XI. of 1891. Printed at p. 606.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1881	XVI.	Obstructions in Fairways	Printed at p. 613.
	XVII.	Portuguese Convention	Printed at p. 615.
	XVIII.	Land-revenue (Central Provinces).	Amended by XVI. of 1889; XII. of 1891. Rep. in part by XII. of 1891. Printed at p. 620.
	XIX.	Forests (Lower Burma)	Amended by V. of 1890; XII. of 1891. Rep. in part by XII. of 1891. Printed at p. 665.
	XX.	Incumbered Estates (Sindh)	Amended by XI. of 1884. Printed at p. 685.
	XXI.	Incumbered Estates (Broach and Kaira).	Printed at p. 695.
	XXII.	Excise (Northern India, Lower Burma, and Coorg).	Rep. in part by XIII. of 1889. Amended by— VI. of 1885; IX. of 1885; II. of 1887, ss. 5 & 6; XVIII. of 1888, s. 7; XIII. of 1890, ss. 2 to 5 (in Burma); XII. of 1891. Rep. in part and amended by XX. of 1890, s. 43. Printed at p. 704.
	XXIII.	Dekkhan Agriculturists' Relief	Rep. in part by XII. of 1891. Printed at p. 717.
	XXIV.	Punjab Laws Amendment	Printed at p. 718.
	XXV.	Bánki Laws	Rep. in part by XII. of 1891. Printed at p. 719.
	XXVI.	Negotiable Instruments	Rep. in part by XII. of 1891. Rep. in part and amended by II. of 1885. Printed at p. 720.
1882	I.	Inland Emigration	Rep. in part by XII. of 1891. Extended by XXII. of 1891 to the C. P. Amended by VII. of 1893. Printed at p. 744.
	II.	Trusts	Rep. in part by XII. of 1891. Printed at p. 794.
	III.	Seditious Publications	Rep. in part by XII. of 1891. Printed at p. 818.
	IV.	Transfer of Property	Amended by III. of 1885. Printed at p. 818.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1882	V.	Easements	Amended by XII. of 1891. Application extended by VIII. of 1891. Printed at p. 859.
	VI.	Companies	Amended by VI. of 1887; XII. of 1891. Printed at p. 878.
	VII.	Powers-of-attorney . .	Rep. in part by XII. of 1891. Printed at p. 953.
	VIII.	Penal Code Amendment . .	Printed at p. 954.
	IX	Prisoners Act (V. of 1871) Amendment.	Printed at p. 955.
	X.	Criminal Procedure . .	Rep. in part and amended by— III. of 1884; XII. of 1891. Rep. in part (locally) by V. of 1876, and s. 3 of the Code. Extended to Upper Burma with modifications by Reg. VII. of 1886. Amended by— X. of 1886; V. of 1887; XIV. of 1887, s. 78; I. of 1889, s. 7; XIII. of 1889; III. of 1891; IV. of 1891; X. of 1891; XII. of 1891; III. of 1894; (Andaman and Nicobar Islands) by Reg. III. of 1876, s. 13, as amended by Reg. I. of 1884, s. 3; (Assam) by Reg. II. of 1883; (Punjab Frontier Dist.) by Reg. IV. of 1887, ss. 9, 37 (*2*), & 46; (Upper Burma) by Reg. XIV. of 1887, s. 4; (locally, Lower Burma) by III. of 1889, s. 5 (when and where notified); (locally, Madras) by V. of 1889, s. 4. Modified in Burma by XI. of 1889. Printed at p. 956.
	XI.	*Tariff.*	*Rep. by X. of 1894.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1882	XII.	Salt	Amended by XX. of 1884; XIX. of 1890. Rep. in part by XII. of 1891. Printed at p. 1195.
	XIII.	*Kánúngos and Patwáris*	*Rep. by IX. of 1889.*
	XIV.	Civil Procedure.	Rep. in part by— XIV. of 1885; IV. of 1886; X. of 1886, s. 24 (2); VIII. of 1887, s. 2. Rep. in part and amended by— VII. of 1888, ss. 3 to 64; XII. of 1891. Rep. in part and amended (Ajmere-Merwára) by Reg. I. of 1877, ss. 2 and 28, and s. 3 of the Code; (Central Provs.) by XX. of 1875, ss. 11 and 12 (as added by II. of 1879, s. 2), and s. 3 of the Code; (Andaman and Nicobar Islands) by Reg. III. of 1876, s. 14 (as amended by Reg. I. of 1884, s. 4). Amended by— XV. of 1882, s. 3, and s. 3 of the Code; VII. of 1887, s. 11; VI. of 1888, ss. 2 to 8; X. of 1888, ss. 1 and 3. (Oudh) by XXIII. of 1876, ss. 18 to 20, and s. 3 of the Code. (in places to which the Act extends) by IV. of 1882, s. 87, and s. 3 of the Code; (Punjab) by XVIII. of 1884, s. 70 (as modified by XVI. of 1887, s. 3); (Coorg) by Reg. II. of 1881, ss. 12A and 12B, as added by Reg. I. of 1885, s. 9. Printed at p. 1209.
	XV.	Presidency Small Cause Courts.	Rep. in part by XII. of 1891. Amended by X. of 1888. Printed at p. 1433.
	XVI.	Incumbered Estates (Jhánsí).	Amended by XX. of 1890, s. 6 (1). Printed at p. 1458.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1882	XVII.	*Ports and Port-dues (amending Act XII. of 1875).*	*Rep. by X. of 1889.*
	XVIII.	Steam-boilers and Prime-movers (Burma).	Amended by I. of 1885. Printed at p. 1468.
	XIX.	Punjab University . . .	Rep. in part by XII. of 1891. Printed at p. 1475.
	XX.	Paper Currency . . .	Amended by XV. of 1890. Printed at p. 1483.
	XXI.	Madras Forest Act Confirmation.	Printed at p. 1489.
	XXII.	Dekkhan Agriculturists' Relief	Rep. in part by XII. of 1891. Printed at p. 1489.

THE UNREPEALED ACTS
OF
THE GOVERNOR-GENERAL IN COUNCIL.

ACT V. OF 1875.*

RECEIVED THE G.-G.'S ASSENT ON THE 9TH FEBRUARY 1875.

An Act to remove doubts as to the rights and liabilities of certain Native Soldiers.

WHEREAS doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts; It is hereby enacted as follows:— Preamble.

1. Every person who has, for the space of six months, been in the receipt of military pay, and been borne on the rolls of any Regiment, Corps, Depôt, Ordnance Establishment, or Department of Her Majesty's Indian Army (of which the last pay-statement, if produced, shall be evidence), shall be deemed to have been duly enlisted, enrolled, and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment, or attestation, or on any other ground, save such as may be recognized by the orders and customs of the service. Validation of enlistment of certain native soldiers.

ACT VII. OF 1875.

THE BURMA FISHERIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD FEBRUARY 1875.

An Act to regulate Fisheries in British Burma.

WHEREAS the exclusive right of fishing in British Burma in such fisheries as are hereinafter mentioned belongs, by the custom of the country, to the Government; Preamble.

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* Act V. of 1875 is framed on the model of the Mutiny Act, s. 59.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

Act VII. of 1875.

And whereas it is expedient to provide for the protection of this right, and for conceding the enjoyment of it to the public or to individuals gratuitously, or in consideration of fees or rent, and subject to suitable restrictions and conditions;

It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Burma Fisheries Act, 1875:"

Local extent,

It extends to the territories* for the time being under the administration of the Chief Commissioner of Lower Burma.

Commencement.

[*Repealed by Act XII. of 1876, s. 1.*]

Interpretation-clause.

2. In this Act—

"Fish."

"Fish" includes also shell-fish:

"Fishery" means any collection of water, running or still, tidal or non-tidal, which is itself of a permanent nature, or is connected with some waters of a permanent nature, and in which fish or turtle may be found. It includes the sea:

"To fish" includes to catch turtle or collect their eggs; and

"Fixed engine" means any fixed implement or engine for catching or for facilitating the catching of fish, and includes a net secured by anchors, or otherwise temporarily fixed to the soil.

II.—Rights of Fishery.

Right of fishery.

3. No right to fish in any fishery shall be deemed to have been acquired by the public or by any person, either previously to the passing of this Act or subsequently thereto, except in one of the modes hereinafter described:

Angling.

But nothing herein contained shall be held, nor shall the giving of any grant, lease, license, or permission under this Act be held, to prevent the public from angling with a rod and line only in any fishery:

Proviso.

Provided that such angling may, in any case, with the previous sanction of the Chief Commissioner, be forbidden by a proclamation issued by the Deputy Commissioner of the district in which such fishery is situate for such time as may be fixed by such proclamation:

And nothing herein contained shall prejudice or derogate from any express grant of a right to fish heretofore made by the British Government.

Disposal of right of fishery.

4. The Deputy Commissioner of any district may, subject to such rules, conditions, and restrictions as may be prescribed by the Chief Commissioner in this behalf, dispose of the right of fishing in any fishery situate within his district, or specially

* The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*l*) (*b*), *infra*. The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

placed under his charge by the Chief Commissioner, in any one of the following modes, that is to say, Act VII. of 1875.

(*a*) he may declare such fishery open to the public, or to the inhabitants of any town or village, or to any other class of persons;

(*b*) he may lease the exclusive right of fishing in such fishery to any person;* or

(*c*) he may, where he has not disposed of the right of fishing in any of the foregoing modes, grant licenses to any number of persons to use nets, traps, and other implements for fishing in such fishery,

and (subject as aforesaid) he may declare that any fishery shall cease to be a fishery for the purposes of this Act.

Declarations made before 1st April 1875.

All such declarations, leases, and licenses made and granted by the British Government before this Act comes into operation, and then in force, shall be deemed to have been respectively made and granted under this section.

Recovery of fees, rents, &c.

5. All fees, rents, and other moneys due to Government in respect of any lease, license, or permission granted under this Act, may be recovered in the manner prescribed by the law for the time being in force for the recovery of arrears of revenue.†

III.—Erection of Weirs.

Weirs not to be erected without sanction of Deputy Commissioner.

6. No weir or other fixed obstruction, and no fixed engine tending to hinder the movements of fish, or to interfere with the flow of the water, or to impede navigation, shall be erected, placed, maintained, or used in any fishery, or in waters connected with any fishery, by a grantee or lessee, or by any other person whomsoever, without a special permission in that behalf under the hand of the Deputy Commissioner of the District in which such fishery is situate.

IV.—Penalties.

Penalties.

7. Any person who commits any of the following offences (namely)—

(*a*) fishes in any fishery not having a right to fish therein,

(*b*) erects, places, maintains, or uses any fixed obstruction or fixed engine in a fishery, or in waters connected therewith, without being specially permitted to do so under section 6,

(*c*) puts or knowingly permits to be put, or causes or knowingly permits to flow, into any fishery, any solid or liquid matter to such an extent as to poison or kill, or to cause the water to poison or kill, fish,

(*d*) interferes with, or makes any demand in consideration of, the lawful use of the water of any fishery for purposes unconnected with the taking of fish,

shall be punished, for a first offence, with imprisonment for a term not exceeding three months, or a fine not exceeding two hundred rupees, or both;

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* Leases of fisheries granted under this Act are exempted from stamp-duty by Act I. of 1879, Sch. II.

† See Act II. of 1876, ss. 45-51, *infra*.

Act VII. of 1875.

and, for a second offence, with imprisonment for a term not exceeding six months, or a fine not exceeding five hundred rupees, or both.

Forfeiture of obstructions.

And any obstruction or engine erected, placed, maintained, or used in contravention of section 6, and any fish taken by means of such obstruction or engine, or otherwise in contravention of this Act, or of any rules made hereunder and for the time being in force, shall be forfeited,

Removal of obstructions.

And such obstruction or engine may be removed or taken possession of by the Deputy Commissioner or such person as he empowers in this behalf.

And the expense (if any) of such removal may be recovered from the person erecting, placing, maintaining, or using the obstruction or engine so removed, as if it was an arrear of revenue.*

V.—Subsidiary Rules.

Power to make rules.

8.† The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, make rules for all or any of the following purposes:—

(*a*) for the survey and demarcation of the limits of fisheries;

(*b*) for determining in which of the modes mentioned in section 4, the right to fish in each fishery shall be disposed of;

(*c*) for regulating the conditions on which, and the procedure by which, fisheries may be opened to the public, or granted or let on lease to individuals;

(*d*) for fixing the rates at which, and the conditions on which, licenses to use implements for fishing may be granted;

(*e*) for settling the terms and conditions on which permission to erect, place, maintain, or use fixed obstructions and engines in fisheries, or waters connected therewith, may be granted;

(*f*) for making and maintaining free gaps in weirs;

and generally to carry out the purposes of this Act.

Penalty for breach of rules.

9. The Chief Commissioner may, with the like sanction, in making any such rule, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

Publication of rules.

10. All such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

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* See Act II. of 1876, ss. 45-51, *infra*.

† For rules under s. 8, see *Burma Gazette*, Oct. 27, 1888, Pt. I., p. 486.

ACT IX. OF 1875.*

INDIAN MAJORITY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND MARCH 1875.

An Act to amend the Law respecting the Age of Majority.

Preamble. WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Indian Majority Act, 1875:"

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement and operation. and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Savings. **2.** Nothing herein contained shall affect—

(*a*) the capacity of any person to act in the following matters (namely)—Marriage, Dower, Divorce, and Adoption;

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(*c*) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India. **3.** Subject as aforesaid, "every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI. of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age,"† shall, notwithstanding anything contained in the Indian Succession Act (No. X. of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before:

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before.

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* Act IX. of 1875 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	... ...	See *Gazette of India* . Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	... ...	Ditto. . Sep. 23, 1873, Pt. I., p. 505.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

† The words quoted have been substituted for the original by the Guardians and Wards Act (VIII. of 1890), s. 52.

Act X. of 1875.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(*a.*) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(*b.*) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(*c.*) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

ACT X. OF 1875.*

HIGH COURTS' CRIMINAL PROCEDURE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH MARCH 1875.

An Act to regulate the Procedure of the High Courts in the exercise of their original criminal jurisdiction.

Advocate-General may exhibit informations.

144. The Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts, respectively, will admit.

All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information, shall belong to the Government of India.

Power to enter *Nolle prosequi*.

146.† At any stage of any proceeding under this Act, before the return of the verdict, the Advocate-General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

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* The whole Act (except s. 144 and so much of s. 146 as relates to informations) has been repealed by Act X. of 1882.

† S. 146 (except so much as relates to informations) has been repealed by Act X. of 1882.

XIII

ACT VIII. OF 1875.*

Act XIII. of 1875.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1875.

An Act to amend the Law relating to Probates and Letters of Administration.

Preamble.

WHEREAS, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the province in which such grant is made: And whereas it is expedient to extend over British India the effect of such grants when made by a High Court: and whereas it is also expedient to amend the Court Fees Act, 1870, as to probates, letters of administration, and certificates of administration: It is hereby enacted as follows:—

Addition to Act No. X. of 1865, section 3.

1. [*Repealed by Act XII. of 1891, Sch. I.*]

Addition to Act No. X. of 1865, section 242.

2. To section 242 of the Indian Succession Act, 1865, the following proviso shall be added (namely):—

Effect of unlimited probates, &c., granted by High Court.

"Provided that probates and letters of administration granted by a High Court† after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."

Addition to Act No. X. of 1865.

3. The following section shall be inserted after the said proviso (namely):—

Transmission of certificate by High Court granting probate, &c., to other Courts.

242A. [*See Vol. I., p. 583.*]

Addition after section 246 of Act X. of 1865.

4. After section 246 of the Indian Succession Act, 1865, the following section shall be inserted (namely):—

Additional statements in petition for probate, &c.

246A. [*See Vol. I., p. 584.*]

Addition after section 277 of Act X. of 1865.

5. After section 277 of the Indian Succession Act, 1865, the following section shall be inserted (namely):—

Inventory to include property in any part of British India.

277A. [*See Vol. I., p. 591.*]

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* Act XIII. of 1875 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . . . See *Gazette of India* . Oct. 22, 1881, Pt. I., p. 504.

The North-Western Provinces Tarái . . . . . Ditto . Sep. 23, 1876, Pt. I., p. 505.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

† The expression "High Court" in sections 2, 3, and 4, shall mean, and be deemed to have always meant, (*a*) a High Court for the time being established under the 24th and 25th Vic., c. 104; (*b*) the Chief Court of the Panjáb; (*c*) the Court of the Recorder of Rangoon.—See Act II. of 1877, s. 1.

Act XV. of 1875.

Addition to Act No. VII. of 1870.

6.* After section 19 of the Court Fees Act, 1870, the following chapter shall be inserted (namely) :—

CHAPTER IIIA.—[*See Vol. I., p. 818.*]

ACT XV. OF 1875.*

THE PANJAB LAWS AMENDMENT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH JULY 1875.

An Act to amend the Panjáb Laws Act, 1872.

Preamble.

WHEREAS, in order to provide for the establishment of Rural Police and for the more efficient administration of law in the Panjáb, it is expedient to amend the Panjáb Laws Act, 1872 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Panjáb Laws Amendment Act, 1875 :"

Local extent.

It extends to the territories for the time being under the government of the Lieutenant-Governor of the Panjáb.

Commencement.

And it shall come into force at once.

Addition to Act IV. of 1872.

2† The said Panjáb Laws Act, 1872, shall be read as if the following sections were inserted next after section 39 thereof :—

39A to 39G. [*See Vol. I., p. 980.*]

Substitution of new section for section 50.

3. Section 50 of the said Panjáb Laws Act is repealed, and in lieu thereof there shall be read the following :—

[*See Vol. I., p. 983.*]

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* So much of s. 6 as directs the insertion of s. 19H in the Court-fees Act (VII. of 1870) has been repealed by Act XII. of 1891, Sch. I.

† S. 2, so far as it applies to the Panjáb, and relates to ss. 39A and 39B, has been repealed by Act XII. of 1891, Sch. I. S. 2, so far as it relates to s. 39G, has been repealed by Act XII. of 1891, Sch. I.

ACT XVIII. OF 1875.*

THE INDIAN LAW REPORTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH OCTOBER 1875.

An Act for the Improvement of Law Reports.

Preamble.

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality: And whereas, with a view to furthering these objects, the Governor-General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twenty-fifth of Victoria, chapter 104; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Law Reports Act, 1875:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on such day as the Governor-General in Council notifies in this behalf in the *Gazette of India*.

2 [*Repealed by Act XII. of 1876.*]

Authority given only to authorized reports.

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor-General in Council.

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

ACT XX. OF 1875.

THE CENTRAL PROVINCES LAWS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1875.

An Act to declare and amend the Law in force in the Central Provinces.

Preamble.

WHEREAS it is expedient to declare and amend certain portions of the law in force in the Central Provinces; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Central Provinces Laws Act, 1875;"

* Act XVIII. of 1875 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act XX. of 1875.

Local extent.

It extends to the territories now under the administration of the Chief Commissioner of the Central Provinces:

Commencement.

And it shall come into force on the passing thereof.

Repeal of enactments and rules.

2. On and from the date on which this Act comes into force, the following shall be repealed, that is to say,—

(*a*) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force;

(*b*) all Acts of the Governor-General in Council (except the Acts mentioned in the schedule hereto annexed), which do not expressly or by necessary implication extend to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by an Act of the Governor-General in Council;

(*c*) all rules, regulations, and enactments not being Statutes, Bengal Regulations, Acts of the Governor-General in Council, or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation, or Act of the Governor-General in Council.*

Certain enactments to be deemed to be in force.

3. On and from the said date the enactments specified in the schedule hereto annexed shall be deemed to be in force throughout the said territories, to the extent mentioned in the third column of the said schedule.

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised and performed by the authorities mentioned in that column.

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule.

Confirmation of existing Acts.

4. Every Act of the Governor-General in Council, which extends, or can by notification be extended, to the territories which were under the administration of the said Chief Commissioner at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said Chief Commissioner.

Rules of decision in cases of certain classes.

5. In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by legislative enactment, altered or abolished, or is opposed to the provisions of this Act:

Provided that, when, among any class or body of persons, or among the members of any family, any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

* The proviso to s. 2, being repealed by Act XII. of 1891, Sch. I., has been omitted.

Act XX. of 1875.

6. In cases not provided for by section 5, or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

Rule in cases not expressly provided for.

7. Implements of husbandry and cattle for agricultural purposes, and implements of trade, are exempted from attachment and sale in execution of decrees of the Civil Courts.

Articles exempt from attachment.

8. The said Chief Commissioner may, from time to time, make rules consistent with this Act as to the following matters:—

Power to make subsidiary rules.

(*a*) the maintenance of watch and ward and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies;

(*b*) the imposition of taxes for the purposes mentioned in clause (*a*) of this section on persons holding or joining any of the assemblies herein referred to;

(*c*) the custody of judicial records, civil and criminal;*

(*d*) the appointment, duties, punishment, suspension, and dismissal of all ministerial officers.

9. The Chief Commissioner may, in making any rules under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

Penalty for breach of rules.

10. All rules made under this Act shall, when sanctioned by the Governor-General in Council, be published in the *Central Provinces Gazette*, and shall thereupon have the force of law.

Publication of rules.

Force of rules.

11.† Sections 184, 185, and 189 of the Code of Civil Procedure‡ are hereby repealed.

Local repeal, in part, of Code of Civil Procedure.

12.† For sections 182, 190, 191 of the same Code‡ the following shall be substituted (namely):—

Sections substituted in same Code.

182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course, of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case.

Note of evidence to be taken.

190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record.

Judge unable to make note to record reason of his inability.

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* The following 21 words, "and the destruction, from time to time, of such of the said records as it may be deemed unnecessary to keep," have been repealed by Act III. of 1879 (Destruction of Useless Records Act).

† Ss. 11 and 12 have been inserted by Act II of 1879, s. 2.

‡ These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

Act XX. of 1875.

Power to use note made by Judge dying or removed before conclusion of suit.

191. When the Judge, making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it, or caused it to be made.

SCHEDULE.

(*See section 3.*)

A.—BENGAL REGULATIONS.*

1	2	3	4
Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
V. of 1799...	Estates of Intestates.	Sections 4, 5, and 6.	The functions of the Court of "Sadr Diwáni Adálat" shall be performed by the Judicial Commissioner.
X. of 1804...	Punishment of State offences by Courts-Martial.	So much as has not been repealed	
XI. of 1806...	Passage of Troops.	Sections 2 to 6 and section 8, with the exception of such part as authorizes Collectors and their native officers, or Magistrates and their police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers.†	The powers of the "Governor-General in Council" and of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XI. of 1812 ...	Foreign Immigrants.	So much as has not been repealed.	The powers of the "Nizámut Adálat" shall be exercised by the Judicial Commissioner.

* So much of Act XX. of 1875 as relates to the following Regulations has been repealed by the Acts noted against each. The references to those Regulations in this schedule have therefore been omitted :—

Ben. Reg. I. of 1798 : Act IV. of 1882.
Ben. Reg. XVII. of 1806 : Act IV. of 1882.
Ben. Reg. XX. of 1810 : Act XIII. of 1889.
Ben. Reg. V. of 1817 : Act VI. of 1878.
Ben. Reg. XX. of 1825 : Act X. of 1882.
Ben. Reg. VI. of 1819 has been repealed in the Central Provinces by Act XVII. of 1878. The reference to that Regulation in this schedule has therefore been omitted.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

SCHEDULE—*concld.*

A.—BENGAL REGULATIONS—*concluded.*

1	2	3	4
Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
III. of 1818 ...	State Prisoners...	So much as has not been repealed.	
VI. of 1825 ...	Supply of troops on the march.	The whole.	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XI. of 1825 ...	Alluvion and Diluvion.	The whole.	
V. of 1827 ...	Administration of landed property.	So much as has not been repealed, except the words and figures "and clauses 5 and 6, section 16, Regulation III., 1803."	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.

B.—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.*

1	2	3
Number and year of Act.	Subject.	Extent of operation.
VIII. of 1851 ...	Tolls on Roads and Bridges.	The whole Act, except section 1 and the schedule.
XIII. of 1857 ...	Opium	Sections 21, 22, 23, 25, 26, 27, 28, 29.
XV. of 1864 ...	Tolls	The whole Act.

* Act XVIII. of 1853 has been repealed by Act XIII. of 1889. The reference to the former Act in this schedule has therefore been omitted. Act XX. of 1875, so far as it relates to Act XL. of 1858, has been repealed by Act VIII. of 1890. The reference to Act XL. of 1858 in this schedule has therefore been omitted.

Act II. of 1876.

ACT II. OF 1876.

THE BURMA LAND AND REVENUE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JANUARY 1876.

An Act to declare the Law relating to Interests in Land, and to regulate the Assessment and Collection of Land-revenue, Capitation-tax, and other Taxes in British Burma.

Preamble.

WHEREAS it is expedient to declare the law relating to the acquisition by private persons of rights in land in the Province of British Burma;

And whereas it is expedient also to consolidate and amend the law relating to the assessment and collection of land-revenue, capitation-tax, and certain other taxes in the said Province; It is hereby enacted as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Burma Land and Revenue Act, 1876:"

Local extent.

It extends to all the territories now under the administration of the Chief Commissioner of Lower Burma,* except the Hill District of Arakan, and except such other places as the said Chief Commissioner may, from time to time, by notification in the *Burma Gazette*, and with the previous sanction of the Governor-General in Council, exempt from its operation;

Commencement.

And it shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor-General in Council, may direct by notification in the said Gazette.†

Repeal.

2. On and from the date on which this Act comes into force, Act XXXV. of 1852 (*for the abolition of the Poll-tax within the towns of Akyab and Kyouk Phyoo in the province of Arakan, and for levying a tax on lands covered by dwelling-houses within those towns*), and all regulations and rules (if any) relating to any of the matters provided for by this Act, and then having the force of law, shall ber epealed.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context—

"Possession."

(*a.*) Land is said to be in the possession of a person under this Act—

(1) when it is occupied by him, or by his servant, agent, tenant, or mortgagee, or by some other person holding under him;

(2) when he, his servant, agent, tenant, mortgagee, or other person holding under him, has paid the revenue which fell due in respect of such land during the last preceding year of assessment as fixed under section 41;

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* The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

† The Act came into force on Feb. 1, 1879.—See *Burma Gazette*, Feb. 1, 1879, Pt. II., p. 29.

(3) if such land, left fallow in the ordinary course of husbandry, was, when last cultivated by him, his servant, tenant, agent, or mortgagee, or by some other person holding under him: Act II of 1876.

Provided that no person shall be deemed to be in possession, merely on the grounds mentioned in the second or third clause of this definition, of any land which is occupied by a person not holding under him, or of any land which he has relinquished by a notice in writing presented to a revenue-officer at such time of the year as the Chief Commissioner may, by rule from time to time, appoint in this behalf:

"Revenue-officer."

(*b.*) "Revenue-officer" means any person whom the Chief Commissioner may appoint, by name or as holding an office, to do—

(1) anything required by this Act to be done by a revenue-officer; *

(2) anything to be done by a Government officer under this Act or under any rule made under this Act, and for the doing of which no agency is specially provided by this Act:

"Notification."

(*c.*) "Notification" means a notification published in the *British Burma Gazette*.

PART II.—Of Rights over Land.

Lands excluded from the operation of Part II.—

4. Nothing contained in this Part shall apply to the following:—

Reserved forests:

(*a.*) Land included in any forest constituted 'a reserved forest' under the law for the time being in force:

Fisheries:

(*b.*) Land included in any fishery demarcated under the Burma Fisheries Act, 1875:

Public roads, &c.:

(*c.*) The soil of any public road, canal, drain, or embankment:

Towns:

(*d.*) Land included within the limits of any town:

Dwelling-places:

(*e.*) Land appropriated to the dwelling-places of any town or village:

Cantonments:

(*f.*) Land included in any military cantonment:

Civil stations:

(*g.*) Land included in any civil station:

Lands of religious and educational institutions.

(*h.*) Land belonging, when this Act comes into force, to the site of any monastery, pagoda, or other sacred building, or of any school, and continuing to be used for the purposes of such monastery, pagoda, building, or school.

Power to exclude other land.

The Chief Commissioner may, from time to time, by notification, exclude any other land from the operation of this Part.

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* As to classes of officers appointed under s. 3 (*b*) to do the acts required by this Act to be done by a revenue-officer, see *Burma Gazette*, June 23, 1888, Pt. I., p. 258.

Act II. of 1876.

Power to define boundaries of excluded lands.

5. When the boundaries of any lands exempt or excluded under section 4 from the operation of this Part need definition for the purposes of that section, and no other mode of defining them is provided by law, the Chief Commissioner shall cause them to be defined by the revenue-officer.

If, before they are defined, any question arises as to whether any land is included within them, such question shall be decided by the revenue-officer, whose decision, subject to appeal and review as hereinafter provided, shall be final.

Rights which may be acquired over land.

6. No right of any description shall be deemed to have been or shall be acquired by any person over any land to which this Part applies, except the following:—

(*a*) rights created by any grant or lease made by or on behalf of the British Government;

(*b*) rights acquired under sections 27 and 28 of the Indian Limitation Act, 1871;*

(*c*) rights created or originating in any of the modes hereinafter in that behalf specified;

(*d*) rights legally derived from any right mentioned in clauses (*a*), (*b*), and (*c*) of this section.

Status of landholder how acquired.

7. Except as provided in section 22, any person having been in possession of any culturable land for twelve years continuously, and having, during that period, regularly paid the revenue due thereon, or held the same under an express exemption from revenue, shall be deemed to have, upon the expiration of that period, acquired the status of a landholder in respect of such land:

Provided that such status shall not be deemed to have been acquired by any possession which terminated more than twelve years prior to the date on which this Act comes into force.

Explanation 1.—When land in the possession of one person comes immediately into the possession of another, by transfer or succession, the possession is deemed to be continuous, and the latter may, in reckoning his length of possession, add the possession of the former to his own.

Explanation 2.—When any revenue has been paid in respect of any land by any person holding such land under the person in possession thereof, such revenue shall, for the purposes of this section, be deemed to have been paid by the person so in possession.

Landholder's rights defined.

8. A landholder shall have a permanent heritable and transferable right of use and occupancy in his land, subject only—

(*a*) to the payment of all such revenue, taxes,† and rates as may, from time to time, be imposed in respect of such land under any law for the time being in force;

(*b*) to the reservation in favour of Government of all mines and mineral products, and of all buried treasure, with full liberty to work and search for

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* See Act XV. of 1877, s. 2 and ss. 26 and 27.

† The word "cesses" has been repealed by Act II. of 1880.

the same, paying to the landholder only compensation for surface-damage as estimated by the revenue-officer. Act II. of 1876.

9. *First Clause.*—Any person, having acquired the status of a landholder in respect of any land before the date of this Act coming into force, and having been out of possession of such land on the said date, may, within three years from the said date, or within twelve years from the date on which he was last in possession, whichever first expires, proceed to recover possession of the said land in the manner hereinafter provided, that is to say—

Landholders out of possession when Act comes into force.

(*a*) if no other person is in possession of the same, he may resume possession thereof;

(*b*) if any other person is in possession of the same, he may apply to the revenue-officer to be reinstated in possession thereof.

Second Clause.—Any person having the status of a landholder in respect of any land, and being in possession of such land on the date on which this Act comes into force, and (except as provided in section 12) voluntarily relinquishing possession of such land within the three years next following such date, may, at any time before the expiry of the said period of three years, proceed to recover possession of the same in manner provided in the first clause of this section:

Landholders relinquishing possession within three years from Act coming into force.

Third Clause.—All persons entitled to resume possession of lands, or to apply to the revenue-officer under the first or second clause of this section, and neglecting to resume possession or apply in manner aforesaid within the periods limited by the said clauses respectively, shall forfeit their status as landholders in respect of such lands.

Forfeiture of their status by neglect to assert it.

10. On receiving any application under section 9, it shall be in the discretion of the revenue-officer, after such enquiry as he thinks fit to make, either to reject such application, or to put the applicant in possession of the land comprised in his application.

Applications by them for possession how dealt with.

Any applicant whose application is rejected under this section may, within two months from the date of such rejection, institute a suit in the Civil Court to recover possession of the land comprised in his application.

Suits by them on application being rejected.

Any such applicant who neglects to institute such a suit within the said period of two months shall forfeit his status of landholder in respect of such land.

Forfeiture of their status by neglect to institute such suits.

11. Any landholder who, except as provided in section 12, voluntarily relinquishes the possession of any land after the expiry of three years from the date on which this Act comes into force, shall at once forfeit his status of landholder in respect of such land.

Landholders relinquishing possession after three years from Act coming into force.

12. Whenever any person in possession of land, and claiming the status of a landholder in respect thereof, desires temporarily to relinquish the possession of the same, he may present a petition to the revenue-officer, requesting him to take over such land.

Right of landholder to make over land temporarily to revenue-officer,

Act II. of 1876.

The revenue-officer on receipt of such petition, if it appears to him, on such enquiry as he thinks fit to make, that the petitioner is entitled to such status, shall cause a notice to be published in such manner as the Chief Commissioner may by rule prescribe, declaring that he has taken over the land, and the land shall thereupon be at his disposal to be let on lease or otherwise dealt with, subject to the rights of any third parties over the land and to the right of the petitioner next hereinafter reserved.

and to recover possession within twelve years.

13. The petitioner may, at any time within twelve years from the date on which the land has been taken over by the revenue-officer, apply to the revenue-officer to reinstate him in possession of the same.

On receiving such application, the revenue-officer shall, in such manner as may be provided by rules made under this Act and in force for the time being, give notice of the application to any person who may be in occupation under him, and shall in due time proceed to eject him, and shall put the applicant in possession of the land:

Provided that no person shall be ejected under this section from any land which, before receiving notice from the revenue-officer of the said application, such person or his predecessor in interest has in any way prepared for cultivation, until the person sought to be ejected has gathered in his crop:

Provided also that no person shall be so ejected from any land which he or his predecessor in interest has planted, drained, embanked, or otherwise permanently improved, until he has been paid by the applicant the value of such improvements at the date of ejectment, such value to be determined, in case the parties differ, by order of the revenue-officer.

Applications to recover possession by persons claiming as succeeding to the rights of the petitioner.

14. If any person applies for possession of land under section 13 alleging that he is the successor in interest of the petitioner from whom such land was taken over by the revenue-officer, the revenue-officer may, in his discretion, reject such application, or proceed thereon under section 13 as if it were an application by the said petitioner, and the person from whom such land has been taken, or any other person, may sue to establish his title to such land.

Declaration and record of original acquisition of landholder's status.

15. Any person being in possession of any land, and asserting that he himself, or any other person through whom he claims, acquired the status of a landholder in respect of such land in the manner provided by section 7, may apply to the revenue-officer to record, in a register to be provided for this purpose, a declaration of such status having been so acquired. And the revenue-officer, if it appears to him, after a notice of such application has been published for such period and in such manner as the Chief Commissioner may by rule prescribe, and after such enquiry as the revenue-officer may think fit to make, that such status was so acquired, shall record a declaration to that effect, and furnish the applicant with a certificate of the same having been recorded.

Cancellation of such declarations and records.

16. If, within five years from the date on which a declaration has been recorded under section 15, the revenue-officer is satisfied that it is erroneous, he may cancel it:

Provided that no such declaration shall be so cancelled until a notice of the intention to cancel it has been published for such period and in such manner as the Chief Commissioner may, from time to time, by rule direct.

While any such declaration remains on the register uncancelled, no fresh declaration, inconsistent therewith, shall be recorded in such register.

Fresh declarations.

17. Whenever a question arises in any proceeding before any Civil Court as to whether any person acquired the status of a landholder in respect of any land in the manner provided by section 7, and it appears that a declaration of the fact of such status having been acquired by him has been made under section 15 not less than five years before the commencement of such proceeding, and is still uncancelled, the Court shall decide in accordance therewith.

Questions as to original acquisition or as to the loss of landholder's status how to be dealt with by Civil Courts.

Whenever any such question arises in any such proceeding and it appears that no such declaration has been so made, or if made, that it has been cancelled,

and whenever any question arises whether the status of a landholder, having been acquired, has been subsequently lost,

the Court shall refer such question to the revenue-officer, and shall give judgment in accordance with his decision thereon:

Provided that, where any party desires to appeal from the decision of the revenue-officer on any question so referred to a revenue-officer of higher grade empowered to hear such appeal by the rules for the time being in force, the Court shall, on such conditions as to the furnishing of security or otherwise as it thinks fit, defer its judgment so as to admit of such appeal being preferred, and, in the event of a decision being given in appeal different from that given by the revenue-officer to whom the question was originally referred, shall give judgment in accordance with the decision pronounced in appeal.

18. The Chief Commissioner may, from time to time, make rules for the disposal, by way of grant or otherwise, of any land over which no person has a right of either of the classes specified in clauses (*a*) and (*c*) of section 6.

Power to make rules for the disposal of available lands.

Such rules may provide, among other matters, for the following:—

(*a*) the amount or kind of interest to be created in such land, and the conditions (if any) subject to which such interest may be conferred;

(*b*) the mode in which grants and other dispositions of the land may be made;

(*c*) the total or partial exemption, either absolutely or subject to conditions, of the land from revenue for a term of years, or for any life or lives, or during the maintenance of any institution;

(*d*) the realization of any money payable in consideration of the grant or other disposition, or of any penalty payable on breach of a condition annexed to such grant or disposition, as if it were an arrear of revenue due in respect of the land by the person taking under the grant or disposition, his legal representatives, or assigns.

19. The Chief Commissioner may also, from time to time, make rules to regulate the temporary occupation of such land as last aforesaid, and may empower any revenue-officer to eject any person occupying, or continuing to occupy, such land in contravention of such rules.

Temporary occupation of available land.

Act II. of 1876.

Allotment of grazing grounds.

20. The Chief Commissioner shall from time to time, as occasion requires, make rules for the allotment, from the land referred to in section 18, of grazing grounds to the inhabitants of any village in the neighbourhood whom he considers to stand in need of such allotment, and for regulating and controlling the enjoyment of such grazing-grounds by persons permitted to resort thereto.

Allotments to Toungya-cutters.

21. The Chief Commissioner shall also make rules, from time to time and for different places as occasion requires—

for the allotment, from the land referred to in section 18, for the use of tribes or families practising Toungya-cultivation, of areas suitable for such cultivation of sufficient extent, and situated in localities reasonably convenient for the purposes of the persons to whom they are allotted,

and for regulating and controlling the enjoyment of land so allotted by persons permitted to resort to the same.

Bar to acquisition of rights over lands disposed of or allotted under sections 18, 20, and 21.

22. No person shall acquire, by length of possession or otherwise, any right over lands disposed of or allotted under section 18, section 20, or section 21, beyond that which is given by the rules made under the said sections respectively.

PART III.—Of Revenue and Taxes.

A.—Of Land-revenue.

Land liable to land-revenue-assessment.

23. All culturable land and all land which is culturable when this Act comes into force, but which subsequently becomes unculturable in consequence of the erection of buildings or otherwise by the act of man,

and all land assessed to land-revenue when this Act comes into force,

shall be liable to be assessed to land-revenue in manner hereinafter mentioned.

But nothing in this section shall apply to—

(*a*) land which, when this Act comes into force, belongs to the site of any monastery, pagoda, or other sacred building, or of any school, and which continues to be used for the purposes of such monastery, pagoda, building, or school;

(*b*) land exempt from assessment under the express terms of any grant made by, or on behalf of, the British Government;

(*c*) land in respect of which a Toungya-tax is imposed under section 33;

(*d*) land appropriated to the dwelling-places of any town or village, and exempted from the operation of the former part of this section by order of the Chief Commissioner, which order the Chief Commissioner is hereby empowered to make from time to time.

Mode and amount of assessment.

24. The assessment referred to in section 23 shall be either—

(*a*) by annual rates per acre or other superficial measure of the land, or

(*b*) by annual rates on trees growing on the land,

The Chief Commissioner may, from time to time, make rules for fixing such rates and determining under what circumstances each description of rate is to be imposed. Act II. of 1876.

Subject to such rules, the nature and amount of such assessment shall be in the discretion of the revenue-officer:

Provided that no assessment shall be made in derogation of the terms of any grant made by, or on behalf of, the British Government.

Rates may be altered.

25. Subject to the rules made under section 24 and for the time being in force, and, except as provided in that section and in sections 28 and 42, the rates payable in respect of any land may be altered from time to time as the Chief Commissioner may direct.

Right to a settlement.

26. Any person in possession of any culturable land which is liable to be assessed to land-revenue may apply to the revenue-officer to make a settlement with him of such land.

If such person appears to have a permanent heritable and transferable right of use and occupancy in the land, the revenue-officer shall offer him a settlement of the nature hereinafter described.

If such person does not appear to have such a right, it shall be in the discretion of the revenue-officer to offer or refuse such settlement.

Nature of settlement.

27. The settlement offered to the applicant may be either—

(*a*) a settlement of a single annual sum payable in respect of the whole land, or

(*b*) a settlement of certain annual rates per acre or other superficial measure of land.

In either case the settlement may provide that, for any additional land situate within certain local limits which the applicant may cultivate (not being land acquired by him by transfer or succession), he shall not be required to pay, during the continuance of such settlement, any revenue whatever or any revenue in excess of rates fixed thereby for such additional land.

The Chief Commissioner shall by rules determine the cases in which each of the said descriptions of settlement shall be offered, and the general principles on which the amount or rate of the revenue payable thereunder shall be fixed.

Subject to such rules, the nature and stipulations of the settlement to be offered in each case shall be in the discretion of the revenue-officer.

Rights conferred by settlement.

28. When a settlement of any land offered under sections 26 and 27 has been accepted, neither the person on whose application such settlement has been made, nor any person succeeding him in possession of the land by transfer or succession, nor any person holding under him or under a person so succeeding him, shall, during the term of such settlement, be held liable to pay any revenue in respect of such land beyond that fixed by the settlement.

But no person shall be deemed to have acquired any right to or over any land, as against any other person claiming rights to or over the same land, merely on the ground that a settlement of such land has been made on his application, or on the application of some person through whom he claims.

Act II. of 1876.

Term of settlement.

29. The settlement shall be made for such term as the Chief Commissioner may from time to time by rule direct.

The settlement of any land shall terminate at the close of any year of assessment prescribed under section 41 if the person in possession of such land, and entitled under section 28 to the benefit of such settlement, not less than three months before the close of such year presents to the revenue-officer a notice in writing declaring that he desires to rescind the settlement, and at the same time pays to him all revenue payable in respect of the said land to the close of such year.

If any such person omits to give the notice and make the payment required by this section, he shall continue liable for the revenue payable from time to time under the settlement, although he may have relinquished possession of the land.

Continuance of expired settlement until new settlement is made.

30. If the term for which a settlement of any land has been made elapses before a new settlement thereof is made, any person who was entitled to the benefit of the expired settlement at the time of its expiration and continues in possession of such land, and any person holding under him, or claiming through him without an interruption of possession, shall be entitled to the benefit, and be bound by the stipulations, of the expired settlement, until a new settlement of such land is made:

Provided that the said stipulations shall cease to be in force at the close of any year of assessment as aforesaid, if the person in possession, not less than three months before the close of such year, presents to the revenue-officer a notice in writing requiring that they should so cease.

B.—Of the five per cent. cess.

31, 32. [*Repealed by Act II. of 1880. s. 3.*]

C.—Of the Toungya-tax.

Toungya-tax.

33. The Chief Commissioner may direct that, in lieu of the revenue assessable on any land under Toungya-cultivation, there shall be collected an annual tax either on each male person who has completed his age of eighteen years, or on each family of persons, taking part in the cultivation of such land at any time during the year of assessment as fixed under section 41.

The rates of such tax may be fixed from time to time by the Chief Commissioner, but shall not exceed the following, that is to say,—

on each male cultivator, two rupees,

on each family of cultivators, two rupees.

*D.—Of the Capitation-tax and the Land-rate in lieu thereof.**

Capitation-tax.

34. A capitation-tax shall be payable by all males between the ages of eighteen and sixty years, at such rates as the Chief Commissioner may, from time to time, by notification direct:

* Persons liable to pay income-tax under Act II. of 1886 are exempt from payment of capitation-tax or land-rate inlieu thereof levied under this Act.—See Act II. of 1886, s. 48.

Provided that such rates shall not exceed the following, that is to say,— Act II. of 1876.

on married men, five rupees a year;

on men who have no wives, two rupees eight annas a year:

Provided also that this tax shall not be payable—

(*a*) by the residents of any of the towns mentioned in the schedule hereto annexed;

(*b*) by the residents of any other town on which the Chief Commissioner may impose a land-rate under section 35.

Land-rate in lieu of capitation-tax.

35. In the towns mentioned in the schedule hereto annexed, and in such other towns as the Chief Commissioner may, from time to time, by notification direct, there shall be levied, instead of the capitation-tax, an annual rate upon land to be fixed from time to time by the Chief Commissioner by notification, but not to exceed the following, that is to say,—

on land covered with buildings, one pie and a half per square foot;

on land not covered with buildings, three rupees per acre.

The boundaries of the towns in which such rate is leviable shall be fixed, from time to time, for the purposes of this section, by the Chief Commissioner by notification, and may be so fixed as to include any suburbs of such towns.

Explanation.—The rate leviable on any land under this section shall be in addition to any land-revenue payable thereon.

Exemption from capitation-tax and land-rate.

36. The Chief Commissioner may, by notification,—

(*a*) exempt any person or class of persons, or the residents of any particular locality, from the payment of capitation-tax;

(*b*) exempt any lands, or any class of lands, throughout the Province, or in any part thereof, from land-rate in lieu of capitation-tax;

(*c*) revoke any such exemption.

E.—Of Personal Liability for certain Revenue and Taxes.

Personal liability for land-revenue and land-rate in lieu of capitation-tax.

37. The amount payable on account of revenue* or land-rate in lieu of capitation-tax on any land for any year of assessment shall be due jointly and severally from all persons who have been in possession of such land at any time during such year, and all persons who have held under them as tenants, mortgagees, or conditional vendees.

Personal liability for tax on families.

38. When a tax per family of cultivators of any land is imposed, the amount due for any year of assessment from each family shall be due jointly and severally from all males of such family who, at any time during such year, being then above the age of eighteen years, took any part in the cultivation of such land.

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* The words, "five per cent. cess," have here been omitted, having been repealed by Act II. of 1880, s. 3, *infra*.

Act II. of 1876.

F.—Of the Manufacture of Salt, and of Licenses to prepare and collect Cutch, Beeswax, &c.

Power to make rules for—

39. The Chief Commissioner may, from time to time, make rules—

licensing salt manufacture;

(*a*) for granting licenses to manufacture salt;

(*b*) [*Repealed by Act XII. of 1882, s. 2;*]

composition with licensees.

(*c*) for compounding with any holder of a license for the payment by him of an annual sum assessed upon the plant employed by him, in lieu of the duty which would be payable by him* on the salt produced with the aid of such plant.

Penalty for manufacturing or storing salt without a license.

Any person who, without a license for the time being in force,—

(*d*) engages in the manufacture of salt;

(*e*) owns works for the manufacture of salt; or

(*f*) stores salt exceeding such quantity as the Chief Commissioner may, from time to time, by notification fix in this behalf;

shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees, and to a further fine of ten rupees for every day after a first conviction under this section in which he continues such manufacture or storage:

And all salt in respect of which a conviction under this section has taken place, and all materials and implements used for the purpose of manufacturing such salt, shall be liable to confiscation by order of the convicting Magistrate.

Power to make rules regarding collection and preparation of cutch, beeswax, &c.

40. The Chief Commissioner may, from time to time, make rules—

(*a*) for granting licenses to prepare or collect, or farms of the right of preparing or collecting, cutch, beeswax, honey, lac, cardamoms, and other forest-produce, or edible birds' nests, upon land over which no person has a right of either of the classes specified in clauses (*a*) and (*c*) of section 6:

(*b*) for fixing the amount of fees to be charged in respect of such licenses or farms.

G.—Miscellaneous.

Year of assessment.

41. The year of assessment of any revenue,† rate, tax, or fee leviable under this Part, shall commence on such day of the calendar year as the Chief Commissioner may, from time to time, by rule prescribe.

When increase of rate takes effect.

42. Notwithstanding anything contained in this Part, no enhancement made in any such revenue, rate, tax, or fee, shall take effect until the commencement of the year of assessment following that in the course of which it is made.

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* The words, "under clause *b*," repealed by Act XII. of 1882, s. 2, have here been omitted.

† The word "cess," repealed by Act II. of 1880, s. 3, has here been omitted.

PART IV.--OF ARREARS AND THE MODE OF RECOVERING THEM. Act II. of 1876.

Revenue, &c., when due, where and to whom payable.

43. Every sum payable under this Act on account of any revenue, tax,* rate, fee, duty, or composition, shall fall due on such date, and shall be payable at such place and to such person, as the Chief Commissioner may, from time to time, by rule direct.

"Arrear" and "defaulter" defined.

44. When any such sum has fallen due, and a written notice of demand for it has been served on any one of the persons liable for it, or published in such manner as the Chief Commissioner may from time to time by rule direct, and ten days have elapsed from the service or publication of such notice without such sum having been paid, such sum shall be deemed to be an arrear; and every person liable for it shall be deemed to be a defaulter.

Proceedings against defaulters for recovery of arrear.

45. An arrear may be realized as if it were the amount of a decree for money passed against the defaulter in favour of any revenue-officer whom the Chief Commissioner may from time to time appoint in this behalf by name or as holding any office.

Proceedings with a view to the realization of such arrears may be instituted by such officer before any other revenue-officer whom the Chief Commissioner may from time to time appoint by name or as holding any office, and except in so far as the Chief Commissioner may otherwise by rule direct, such other officer may exercise all the powers conferred on, and shall conform to all rules of procedure prescribed for, a Court executing a decree by the Code of Civil Procedure† :

Provided that—

except when execution is applied for against a defaulter who has absconded, or who is reasonably believed to be about to abscond,

the officer before whom proceedings are instituted under this section shall, before issuing any process of execution against a defaulter, cause a notice to be served on him in the manner prescribed for the service of summons on defendants in civil suits, requiring him either to pay the amount of the arrear, or to appear on a day fixed in the notice, and show cause why such amount should not be realized from him.

If, on the day so fixed, such amount has not been paid, and the defaulter does not appear, or, appearing, fails to show cause as aforesaid, the said officer may order the process to issue forthwith.

Proceedings against the land.

46. Instead of, or in addition to, the proceedings which may be instituted under section 45, a revenue-officer empowered in this behalf by the Chief Commissioner may, when the arrear is one of land-revenue,‡ or land-rate in lieu of capitation-tax, proceed against the land on which such arrear has accrued as next hereinafter provided.

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* The word "cess," repealed by Act II. of 1880, s. 3, has here been omitted.

† Now Act XIV. of 1882.—See s. 3, *ibid.*

‡ The words, "five per cent. cess," repealed by Act II. of 1880, s. 3, have here been omitted.

Act II. of 1876.

Where there is a permanent heritable and transferable right in such land.

47. If such officer finds on enquiry that there exists any permanent heritable and transferable right of use and occupancy in the land, he may sell by public auction such right in the whole of the land, or in such portion thereof, as he may deem sufficient for the realization of the arrear.

The proceeds of such sale shall be applied in the first place in liquidation of the arrear, and in the event of there being any surplus remaining, the revenue-officer shall, if he is satisfied as to the right of any person claiming such surplus, pay the amount thereof to such person, and, if he is not so satisfied, shall hold the amount in deposit for the person who may ultimately succeed in due course of law in establishing his title thereto.

Title conferred by purchase at sale under section 47.

48. The purchaser at a sale held under section 47 shall be deemed to have acquired the right offered for sale, free from all encumbrances created over it, and from all subordinate interests derived from it, except such as may be expressly reserved by the revenue-officer at the time of sale.

Proceedings against the land where no permanent heritable and transferable right exists.

49. If the revenue-officer proceeding against the land finds on enquiry that no permanent heritable and transferable right of use and occupancy exists therein, he may, by proclamation published on the land in such manner as the Chief Commissioner from time to time by rule directs, declare that he has taken possession of such land on behalf of the Government, and may summarily eject any person found in occupation thereof.

Effect of proclamation published under section 49.

50. When a proclamation is published under section 49 in respect of any land over which any private rights of any description exist, such land shall be deemed to have been, from the date of such proclamation, vested in the Government free from all such rights as have not been expressly reserved by the terms of such proclamation.

Costs of proceedings for recovery of arrears.

51. All costs of any proceeding under this Act for the recovery of an arrear may be recovered as if they formed part of such arrear.

Proceedings against defaulting revenue-officers.

52. If a revenue-officer has reason to believe that a revenue-officer subordinate to him, who has collected any sum due under this Act, has absconded or is about to abscond without accounting for such sum, he may issue a warrant for the apprehension of such subordinate officer, and proceed against him, or cause proceedings to be instituted against him, as if he were a defaulter in the amount so collected.

Proceedings against sureties of defaulters and revenue-officers.

53. Any person who has become liable for any amount as surety for a defaulter or revenue-officer may be proceeded against as if he himself were a defaulter in such amount.

PART V.—Miscellaneous.

Erection and repair of boundary-marks.

54. A revenue-officer may, by a notice in writing duly served in accordance with rules to be made under this Act, require any person liable for the revenue of any land, or entitled to hold such land free of revenue, to erect boundary-marks sufficient

for defining the limits of such land, or to repair any such boundary-marks already existing; and if such person fails to comply with his requisition within a period to be specified in the notice, may cause the work to be done, and recover the cost thereof as if it were an arrear of revenue due in respect of the land. Act II. of 1876.

55. Appeals shall lie from orders and decisions given under any provision of this Act, in such cases, to such officers, and subject to such limitations as to time, and such other conditions, as the Chief Commissioner may, from time to time, by rule determine: Appeals.

Provided that decisions by an officer of a grade lower than that of a Commissioner of a division in or on the following matters, claims, and questions, shall not be final (namely):—

(*a*) matters disposed of by revenue-officers under section 5, section 10, and sections 12 to 17 inclusive, except orders as to the value of improvements;

(*b*) claims to occupy or resort to lands under sections 19, 20, and 21, and disputes as to the use or enjoyment of such lands between persons permitted to occupy or resort to the same;

(*c*) questions as to whether any land or any person is liable to be assessed to any revenue,* tax, or rate;

(*d*) questions as to the mode or principle of assessment of any revenue,* tax, or rate, or as to the amount assessed;

(*e*) questions as to the right to a settlement of land-revenue, or the nature or term of the settlement to be offered;

(*f*) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force;

(*g*) questions as to the liability of any person under sections 37 and 38;

(*h*) questions as to whether any revenue,* tax, or rate is in arrear;

(*i*) questions as to the legality of any process issued under section 45;

(*j*) questions as to the validity of a sale under section 47, or as to the effect of a proclamation under section 49:

Provided also that in all cases the Chief Commissioner shall have power to call for and review the proceedings, if he thinks fit to do so, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

56. Except as hereinbefore expressly provided, no Civil Court shall exercise jurisdiction as to any of the following matters (namely):— Bar to jurisdiction of Civil Courts.

(*a*) matters, claims, and questions mentioned in the first proviso to section 55;

(*b*) claims to any office connected with the revenue-administration, or to any emolument appertaining to such office, or in respect of any injury caused by exclusion, suspension, or removal therefrom;

(*c*) claims to have allotments made under section 20 or section 21, and objections to the making of such allotments;

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* The word "cess," repealed by Act II. of 1880, s. 3, has here been omitted.

Act II. of 1876.

(*d*) claims to a remission or refund of any revenue,* tax, rate, fee, duty, or composition payable or paid under this Act;

(*e*) questions as to the right to, or amount of, any compensation for improvements awardable under section 13.

Additional powers which may be conferred on revenue-officers.

57. The Chief Commissioner may, subject to any restrictions from time to time imposed by the Governor-General in Council, invest any revenue-officer by name or as holding any office with any of the following powers, in addition to the powers directly conferred on revenue-officers by this Act, to be exercised by him in any part of British Burma or in any class of cases in any such part:—

(*a*) power to enter upon any land, and to survey, demarcate, or make a map of the same;

(*b*) power to cut and thresh the crop of any land, and weigh the grain with a view to estimating the capabilities of the soil;

(*c*) any power exercised by a Civil Court in the trial of suits;

(*d*) power to delegate the exercise of any power, or the performance of any duty, to a subordinate revenue-officer;

(*e*) power to review any decision or order given by a revenue-officer which is not open to appeal, or from which, if open to appeal, no appeal has been preferred;

(*f*) power to call for the proceedings of any subordinate revenue-officer, and review any order or decision given therein which is not open to appeal, or from which, if open to appeal, no appeal has been preferred.

Additional powers to make rules.

58. In addition to the other matters for which the Chief Commissioner is empowered to make rules by this Act, he may, from time to time, make rules—

(*a*) for the assessment and collection of all revenue and of every* tax, rate, fee, duty, and composition leviable, under this Act;

(*b*) to determine the person by whom, and the time, place, and manner at or in which, anything to be done under this Act, and for which no express provision is made in these respects, shall be done; and generally to regulate the procedure of revenue-officers in all cases;

(*c*) to provide for the investigation by the higher revenue-officers of charges of misconduct preferred against revenue-officers of lower grade;

(*d*) to determine the fees to be charged for the service of process issued under this Act, and the mode in which such fees shall be realized;

(*e*) to regulate the costs in all proceedings before revenue-officers, and to provide for their realization as if they were arrears of land-revenue;

(*f*) as to making advances of money to agriculturists for the purchase of seed and cattle, for the construction, maintenance, and repair of dwelling-houses and other buildings, and for other such purposes not coming within the scope of the Land Improvement Act, 1871;

(*g*) for the recovery of advances made under clause (*f*) of this section, from the persons to whom they were made or their legal representatives; and

(*h*) generally to carry out the provisions of this Act.

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* The word "cess," repealed by Act II. of 1880, s. 3, has here been omitted.

Act V. of 1876.

Penalty for breach of rules.

59. The Chief Commissioner may, in making any rule under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

Publication of rules.

Force of rules.

60. All rules made by the Chief Commissioner under this Act shall, when sanctioned by the Governor-General in Council, be published in the *Burma Gazette*, and shall thereupon have the force of law.

Consolidation and re-publication of rules.

61. The Chief Commissioner shall, at least once in every three years, cause all rules for the time being in force under this Act to be arranged in some convenient order, according to their subject-matter, consolidated, and, where necessary, amended.*

The rules so arranged, consolidated, and amended, shall, after being sanctioned by the Governor-General in Council, be published in the *Burma Gazette*, and upon such publication all previous rules under this Act shall cease to be in force.

SCHEDULE.

(*See sections 34 and 35.*)

Towns in which land-rate in lieu of capitation-tax is levied :—

Rangoon.	Prome.
Bassein.	Tonghoo.
Thyetmyo.	Akyab.

Kyouk Phyoo.

ACT V. OF 1876.†

THE REFORMATORY SCHOOLS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH FEBRUARY 1876.

An Act to provide Reformatory Schools.

Preamble.

WHEREAS it is expedient to provide Reformatory Schools for male youthful offenders ; It is hereby enacted as follows :—

I.—Preliminary.

Short title.

1. This Act may be called "The Reformatory Schools Act, 1876 ;"

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* For consolidated rules under s. 61, see *Burma Gazette*, April 24, 1886, Pt. I., p. 151 ; and for amendments of the same, see *Burma Gazette*, June 23, 1888, Pt. I., p. 258, July 7, 1888, Pt. I., p. 274, Aug. 11, 1888, Pt. I., p. 366, Sep. 22, 1888, Pt. I., p. 426, and Oct. 6, 1888, Pt. I., p. 445.

† Act V. of 1876 is based on 29 & 30 Vic., c. 117.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts : The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p 504.

For the purposes of this Act, the North-Western Provinces and Oudh are to be deemed to be subject to the same Local Government.—See Act XIV. of 1878, s. 6.

Act V. of 1876.

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force in each Province of British India on such day as the Local Government by notification in the official Gazette directs in that behalf.

Section 399 of Code of Criminal Procedure repealed. **2.** On and from that day section 399 of the Code of Criminal Procedure* shall be repealed therein.

Interpretation-clause. **3.** In this Act—

"Youthful offender" means any boy who, being at the time under the age of sixteen years, has been convicted of any offence punishable with imprisonment or transportation:

"Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector of Jails.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools. **4.** With the previous sanction of the Governor-General in Council, the Local Government may—

(*a*) establish Reformatory Schools at such places as it thinks fit;

(*b*) use as Reformatory Schools kept by persons willing to act in conformity with such rules consistent with this act as the Local Government may, from time to time, prescribe in this behalf;

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools. **5.** Every school so established or used must provide—

(*a*) sufficient means of separating the inmates at night;

(*b*) proper sanitary arrangements, water-supply, food, clothing, and bedding for the youthful offenders detained therein;

(*c*) the means of giving such offenders industrial training;

(*d*) an infirmary or proper place for the reception of such offenders when sick.

Inspection of schools. **6.** Every Reformatory School shall, before being used as such, be inspected by the Inspector-General of Jails; and, if he reports that the requirements of section 5 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, and the school shall thereupon be deemed a Reformatory School.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

Power of Courts to direct youthful offenders to be sent to Reformatories. **7.** Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, (*a*) under the age of sixteen years, and (*b*) a proper person to be an inmate of a

* See Act X. of 1882, s. 3.

Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years, and not more than seven years, and which shall be in conformity with any rules made under section 22, and for the time being in force. Act V. of 1876

The powers so conferred on the Court shall be exercised only by (*a*) the High Court, (*b*) the Court of Session, (*c*) a Magistrate of the first class, and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras, and Bombay.

Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatories.

8. Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years, and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under section 22 and for the time being in force.

"Magistrate" defined.

In this section "Magistrate" means, in the towns of Calcutta, Madras, and Bombay, a Magistrate of Police or Presidency Magistrate, and eleswhere a Magistrate of the first class.

Government to determine Reformatory to which such offenders shall be sent.

9. Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may, from time to time, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.

Boys above eighteen not to be detained in school.

10. Nothing contained in section 7, 8, or 9, shall be deeemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

Discharge or removal by order of Government.

11. The Local Government may at any time order any youthful offender—

(*a*) to be discharged from a Reformatory School;

(*b*) if so discharged before the expiration of his sentence, to undergo the residue of such sentence at such place as the Local Government thinks fit; or

(*c*) to be removed from one Reformatory School to another, such school situate within the territories subject to such Government, but so that the whole period of his detention in a Reformatory School shall not be increased by such removal.

III.—Management of Reformatory Schools.

Appointment of Superintendent and Committee of Visitors or Board of Management.

12. For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be natives of India.

The Local Government may, from time to time, suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

Act V. of 1876.

Superintendent may license youthful offenders to employers of labour.

13. Every Superintendent so appointed may permit any youthful offender sent to a Reformatory School who has attained the age of fourteen years, by license under his hand, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a municipality, being an employer of labour, and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation, or calling.

The license shall be in force for three months and no longer, but may, at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

Cancellation of license.

14. The license shall be cancelled at the desire of the employer named in the license;

If complaint of employers just, no fresh license until expiry of twelve months.

and, if it appears to the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

Determination of license.

15. If, during the term of the license, the employer named therein die, or cease from business, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of ill-treatment.

16. If it appears to the Superintendent that the employer has ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintendent to be deemed guardian of youthful offenders.

17. The Superintendent of any Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX. of 1850 (*concerning the binding of apprentices*);

Power to apprentice youthful offender.

and if it appear to the Superintendent that any such offender licensed under section 13 has behaved well during one or more periods of his license, the Superintendent may apprentice him under the provisions of the said Act, and on such apprenticement the right to detain such offender in the school shall cease, and the unexpired term (if any) of his sentence shall be cancelled.

Duties of Committee of Visitors.

18. Every Committee of Visitors appointed under section 12 for any Reformatory School shall, at least once in every month—

(*a*) visit the school to hear complaints, and see that the requirements of section 5 have been complied with, and that the management of the school is proper in all respects;

(*b*) examine the punishment-book;

(*c*) bring any special cases to the notice of the Inspector-General; and

(*d*) see that no person is illegally detained in the school.

Act V. of 1876.

Powers of Board of Management.

19. If, in exercise of the power conferred by section 12, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 13 to 17, both inclusive; and the license mentioned in section 13 may be under the hand of their Chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

20. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 4, clause (*b*), to be a Board of Management under this Act, and thereupon such body or managers shall have all the powers, and perform all the functions, of such Board of Management.

Power of Board to make rules.

21. With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

(*a*) the conduct of business of the Board;

(*b*) the management of the school;

(*c*) the education and industrial training of youthful offenders;

(*d*) visits to, and communication with, youthful offenders;

(*e*) punishments for offences committed by youthful offenders;

(*f*) the granting of licenses for employment of youthful offenders.

In the absence of a Board of Management, the Local Government may, from time to time, make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in clauses (*b*), (*c*), (*d*), (*e*), and (*f*) of this section, and also the mode in which the Committee of Visitors shall conduct their business.

Power of Government of India to make rules.

22. The Governor-General in Council may, from time to time, make rules consistent with this Act for regulating the periods for which Courts and Magistrates may send youthful offenders to Reformatory Schools according to their ages, the nature of their respective offences, or other considerations.

All rules made under this section shall be published in the *Gazette of India*.

IV.—Offences in relation to Reformatory Schools.

Penalty for abetting escape of youthful offenders.

23. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one hundred rupees, or with both.

Arrest of escaped youthful offenders.

24. A police-officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school, or from his employer, and take him back to such school or to his employer.

Act VI. of 1876.

ACT VI. OF 1876.*

THE CHUTIA NAGPUR ENCUMBERED ESTATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH MARCH 1876.

An Act to relieve certain Landholders in Chutiá Nágpur.

WHEREAS it is expedient to provide for the relief of holders of land in Chutiá Nágpur who may be in debt, and whose immoveable property may be subject to mortgages, charges, and liens; It is hereby enacted as follows :—

Preamble.

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Chutiá Nágpur Encumbered Estates Act, 1876."

II.—VESTING ORDER.

Power to vest management of property in an officer appointed by Commissioner.

2. Whenever any holder of immoveable property,

or (when such holder is a minor, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

or the person who would be heir to such holder if he died intestate,

or (when such person is a minor, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

or, when any such property belonging to such holder has been attached in execution of a decree of a Civil Court, the Deputy Commissioner within whose jurisdiction such property is situate,

applies in writing to the Commissioner, stating that the holder of the said property is subject to, or that his said property is charged with, debts or liabilities other than debts due, or liabilities incurred, to Government, and requesting that the provisions of this Act be applied to his case,

the Commissioner may, with the previous consent of the Lieutenant-Governor of Bengal, by order published in the *Calcutta Gazette*, appoint an officer (hereinafter called the manager), and vest in him the management of the whole or any portion of the immoveable property of or to which the said holder is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him or his heir, during the continuance of such management.

"Every application under this section must state—

"(*a*) the particulars of the debts and liabilities as aforesaid to which the said holder is subject, or with which his immoveable property is charged; and

"(*b*) the particulars of the immoveable property of or to which he is then possessed or entitled in his own right, or which he is entitled to redeem.

* Act VI. of 1876 (as amended by Act V. of 1884) has been applied, with certain modifications, to the Deo Estate in the Gya District by Act IX. of 1886.

"Every such application must, except when it is made by a Deputy Commissioner, be verified by the applicant or by some other competent person in the manner required by law for the verification of plaints; and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be deemed to have given false evidence within the meaning of the Indian Penal Code."* Act VI. of 1876.

Effect of order.

3. "On the publication of an order under section 2,"† the following consequences shall ensue:—

Bar of suits.

First, all proceedings, which may then be pending in any Civil Court in British India, in respect to such debts or liabilities, shall be barred; and all processes, executions, and attachments for or in respect of such debts and liabilities shall become null and void;

Freedom from arrest.

Secondly, so long as such management continues,

the holder of the said property and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the said holder was, immediately before the said publication, subject, or with which the property so vested as aforesaid or any part thereof was, at the time of the said publication, charged, other than debts due, or liabilities incurred, to Government,

Moveable property not attachable for prior debts.

nor shall their moveable property be liable to attachment or sale, under process of any Civil Court in British India, for or in respect of such debts and liabilities other than as aforesaid; and

Cessation of power to alienate.

Thirdly, so long as such management continues,

(*a*) the holder of the said immoveable property and his heir shall be incompetent to mortgage, charge, lease, or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

Immoveable property freed from attachment.

(*b*) such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due, or liabilities incurred, to Government, and

Cessation of power to contract.

(*c*) the holder of the same property and his heir shall be incapable of entering into any contract which may involve them, or either of them, in pecuniary liability.

III.—Duties of Manager.

Manager to receive rents and profits,

4. The manager shall, during his management of the said immoveable property, receive and recover all rents and profits due in respect thereof, and shall, upon receiving such rents and profits, give receipts for the same.

and pay therefrom—the Government demand,

From the sums so received, he shall pay—

First, the Government revenue, and all debts or liabilities for the time being due or incurred to Government:

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* To s. 2, the paragraphs quoted have been added by Act V. of 1884, s. 2.

† In s. 3, the words and figure quoted have been substituted for the words "On such publication," by Act V. of 1884, s. 3.

Act VI. of 1876.

Secondly, in the case of under-tenures, the rent (if any) due to the superior landlord in respect of the said property :

rent due to superior landlord,

Thirdly, such annual sum as appears to the Commissioner requisite for the maintenance of the holder of the property, his heir, and their families :

for maintenance of holder and his heir,

Fourthly, the costs of such repairs and improvements of the property as appear necessary to the manager, and are approved by the Commissioner :

costs of repairs and improvements,

and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the holder of the property and his heir as may be established under the provisions hereinafter contained,

costs of management, and debts and liabilities,

"and also in or towards the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from the Government by the Manager under this Act."*

and Government loan to himself.

IV.—Settlement of Debts.

5. On the publication of the order vesting in him the management of the said property, the manager shall publish a notice in English, Urdu, and Hindí, calling upon all persons having claims against the holder of the said property to notify the same in writing to such manager within three months from the date of the publication.

Notice to claimants against holder of property.

Such notice shall be published by being posted at the kachahrís in the district or districts in which the said property lies, and at such other places as the manager thinks fit.

Notice how published.

6. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

7. Every debt or liability other than debts due, or liabilities incurred, to Government, or (in the case of under-tenures) the rent due to the superior landlord, to which the holder of the property is subject, or with which the property is charged, and which

Debt not duly notified to be barred.

* In s. 4, the clause quoted has been added by Act V. of 1884, s. 4.

is not duly notified to the manager within the time and in manner hereinbefore mentioned, shall be barred: Act VI. of 1876.

Admission of claim within further period.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of sections 5 and 6, the manager may admit his claim within the further period of "six months"* from the expiration of the said period of three months.

Determination of debts.

8. The manager shall, in accordance with the rules to be made under this Act, determine the amount of all principal debts and liabilities justly due to the several creditors of the holder of the property, and to persons holding mortgages, charges, or liens thereon, and the interest (if any) due at the date of such determination in respect of such debts and liabilities.

Power to inquire into consideration for leases.

9. If such property or any part thereof be in the possession of any person claiming to hold it under a lease dated within the three years immediately preceding the publication of the order mentioned in section 2, the manager, with the sanction of the Deputy Commissioner and Commissioner (or of the Commissioner only if the Deputy Commissioner be himself the manager), may inquire into the sufficiency of the consideration for which the lease was given; and, if such consideration appear to him insufficient, may, by order, either set aside the lease, or cause the person so in possession to pay such consideration for the said lease as the manager thinks fit, and in default of such payment the lease shall be cancelled.

Power to set aside leases.

Appeal to Deputy Commissioner.

10. An appeal against any refusal, admission, determination, or order under section 6, 7, 8, or 9, shall lie, if preferred within six weeks from the date thereof, to the Deputy Commissioner within whose jurisdiction the property is situate, and the decision of the manager, if no such appeal has been so preferred, shall be final:

Provided that, if the Deputy Commissioner be himself the manager, the appeal shall lie to the Commissioner.

Appeal to Commissioner.

An appeal shall lie from any decision of the Deputy Commissioner, if preferred within six weeks of the date of his decision, to the Commissioner, and the decision of such Commissioner, or of the Deputy Commissioner if no such appeal has been so preferred, shall be final.

Scheme for settlement of debts.

11. When the amount due in respect of the debts and liabilities mentioned in section 8 has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof; and such scheme, when approved by the Commissioner, shall be carried into effect.

Power to return scheme for revision.

Until such approval is given, the Commissioner may, as often as he thinks fit, send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme.

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* In s. 7, the words quoted have been substituted for the words, "nine months," by Act V. of 1884, s. 5.

Act VI. of 1876.

Restoration of owner to his property.

12. "When all the debts and liabilities mentioned in the schedule referred to in section 11, and the amount of any loan received from Government under section 18, together with the interest (if any) due thereon, have been paid and discharged,"*

"or if the Commissioner, at any time before a scheme has been approved by him under section 11, thinks that the provisions of this Act should not continue to apply to the case of the holder of the said property or his heir,"†

"or if at any time an arrangement is made for the satisfaction of the debts and liabilities which is accepted by the creditors, and approved by the Commissioner,"‡

such holder or his heir shall be restored to the possession and enjoyment of the property, or of such part thereof as has not been sold by the manager under the power contained in section 18, but subject to the leases and mortgages (if any) granted and made by the manager under the powers hereinafter contained.

Restoration to be notified.

Where the holder of the property or his heir is so restored under the circumstances mentioned in the second clause of this section, such restoration shall be notified in the *Calcutta Gazette*, and thereupon the proceedings, processes, executions, and attachments mentioned in section 3 (so far as they relate to debts and liabilities which the manager has not paid off or compromised), and the debts and liabilities barred by section 7, shall be revived; and any mortgagee or conditional vendee dispossessed under section 16 shall be reinstated, unless his claim under the mortgage or conditional sale has been satisfied;

Revival of barred proceedings and debts.

Reinstatement of mortgagees.

Period of limitation as to revived proceedings and debts.

and in calculating the periods of limitation applicable to such revived proceedings, and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section 2 shall be excluded.

V.—Powers of Manager.

Power to call for further particulars.

13. The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may at his discretion refuse to proceed with the investigation of the claim until such particulars are supplied.

Power to summon witnesses, and compel production of documents.

14. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses, and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible,

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* In s. 12, the first clause has been substituted for the original by Act V. of 1884 s. 6 (*1*).

† In s. 12, the second clause has been substituted for the original by Act V. of 1884, s. 6 (*2*).

‡ In s. 12, the third clause has been inserted by Act V. of 1884, s. 6 (*3*).

in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure. * Act VI. of 1876

15. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

And every statement made by any person examined by or before the manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code.

Statements of persons examined to be evidence.

16. The manager shall have, for the purpose of realizing and recovering the rents and profits of the said immoveable property, the same powers as the holder of the property would have had for such purpose if this Act had not been passed.

Manager to have powers of holder of estate.

And if such property, or any part thereof, be in the possession of any mortgagee or conditional vendee, the manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to the manager as if a decree therefor had been made in his favour, but without prejudice to the mortgagee or vendee preferring his claim under the provisions hereinbefore contained.

Power to remove mortgagee or conditional vendee in possession.

17. Subject to the rules made under section 19, the manager shall have power to demise all or any part of the property under his management for any term of years "or in perpetuity" † to take effect in possession, in consideration of any fine or fines, or without fine, and reserving such rents and under such conditions as may be agreed upon.

Power to lease.

18. The manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for the settlement of the debts and liabilities (other than as aforesaid) to which the holder of the property is subject, or with which such property or any part thereof is charged,

Power to raise money by mortgage or sale.

by demising by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the said publication,

or by selling, ‡ by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the same property as may appear expedient, "or by borrowing money from the Government at such rate of interest as appears reasonable to the Local Government." §

And no mortgagee advancing money upon any mortgage made under this section shall be bound to see that such money is wanted, or that no more than is wanted is raised.

And the receipt of the manager for any moneys paid to him as such shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipts.

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* See Act XIV. of 1882, s. 3.

† In s. 17, the words quoted have been substituted for the words, "not exceeding twenty years absolute," by Act V. of 1884, s. 7.

‡ In s. 18, certain words repealed by Act V. of 1884, s. 8, have here been omitted.

§ In s. 18, the words quoted have been added by Act V. of 1884, s. 8 (*b*).

Act VI. of 1876.

The powers conferred by this section shall not be exercised until a scheme has been approved by the Commissioner under s. 11. *

VI.—MISCELLANEOUS.

Power to make rules.

19. The Lieutenant-Governor of Bengal may, from time to time, make rules consistent with this Act to regulate the following matters:—

(*a*) the security to be required from subordinate officers under this Act,

(*a a*) the classes of cases which may be submitted by the Commissioner for the consent of the Lieutenant-Governor under section 2, †

(*b*) the notices to be given under this Act and the publication of such notices,

(*c*) the procedure to be followed in determining under section 8 the debts and liabilities due to creditors and other persons, and in performing the other duties imposed on any officer by this Act,

(*d*) the allowance of interest on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment,

(*e*) the order of paying debts and liabilities so determined;

and generally for the guidance of officers in all matters connected with the enforcement of this Act.

Such rules, when approved by the Governor-General in Council, and published in the *Calcutta Gazette*, shall have the force of law.‡

Power to appoint new managers.

20. Whenever the Commissioner thinks fit, he may appoint any officer to be a manager in the stead of any manager appointed under this Act; and thereupon the property then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

21. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Bar of suits.

22. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Chutiá Nágpur in respect of certain suits.

23. Nothing in this Act precludes the Courts in Chutiá Nágpur having jurisdiction in suits relating to the succession to, or claims of maintenance from, any immoveable property brought under the operation of this Act, from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

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* In s. 18, the last clause has been substituted by Act V. of 1884, s. 8 (*c*).

† In s. 19, cl. *aa* has been inserted by Act V. of 1884, s. 9.

‡ For rules under s. 19, see *Calcutta Gazette*, Oct. 3, 1877, Pt. I., p. 1441.

Act not to affect powers conferred by Bengal Act II. of 1869.

24. Nothing in this Act shall be deemed to take away or abridge any power or authority conferred by an Act passed by the Lieutenant-Governor of Bengal in Council, entitled "An Act to ascertain, regulate, and record certain tenures in Chutia Nágpur," on any person appointed to be a Special Commissioner thereunder, or on the Commissioner of the Division of Chutiá Nágpur. Act VII. of 1876.

ACT VII. OF 1876.*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1876.

An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, and to amend the same Act.

Preamble.

WHEREAS it is expedient to extend Act No. XXVII. of 1871 (*for the Registration of Criminal Tribes and Eunuchs*) to the Lower Provinces of Bengal, and to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows:—

Extension of Act XXVII. of 1871, section 1, to Lower Provinces.

1. Section 1 of the said Act shall be read as if, after the words 'Lieutenant-Governors of,' the following word was inserted (namely), 'Bengal.'

Amendment of section 18, Act XXVII. of 1871.

2. Section 18 of the said Act shall be read as if in the second clause, after the words 'persons reside,' the following words were inserted (namely), 'or the agents of such land-owners or occupiers.'

Amendment of section 21, Act XXVII. of 1871.

Section 21 of the said Act shall be read as if in the first clause, after the words 'persons reside,' the following words were inserted (namely), 'or of the agent of any such owner or occupier,'

and as if in the fourth clause, after the words 'occupier of land,' the following words were inserted (namely), 'or of the agent of such owner or occupier.'

Amendment of section 22, Act XXVII. of 1871.

And section 22 of the same Act shall be read as if, after the words 'occupier of land,' the following words were inserted (namely), 'or of the agent of such owner or occupier.'

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* Act VII. of 1876 has been declared, under s. 3 of the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán.—See Notification No. 1394, dated Oct. 21, 1881, published in the *Calcutta Gazette*, Nov. 2, 1881, Pt. IA., p. 189, and in the *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act IX. of 1876.

ACT IX. OF 1876.*

THE NATIVE COINAGE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1876.

An Act to enable the Government of India to declare certain coins of Native States to be a legal tender in British India.

WHEREAS it is expedient to enable the Governor-General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by Native States, shall be a legal tender in British India; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Native Coinage Act, 1876:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Interpretation-clause.

2. In this Act "Native State" means any State in India which is under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown.

Power to declare that the coins of a Native State shall be legal tender.

3. Subject to the provisions of section 4, the Governor-General in Council may, from time to time, by notification in the *Gazette of India*, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act for any Native State, shall be a legal tender in British India;

and the provisions of the Indian Coinage Act, 1870, shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification.

When such power may be exercised.

4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver, or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal;

in the case of coins whether of gold, silver, bronze, or copper,

(*b*) they are identical in weight with some coins of the Government of India of the same metal, which may, for the time being, be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor-General in Council;

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* Act IX. of 1876 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I, p. 504.

(*c*) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such Native State, and have been approved by the Governor-General in Council;

(*d*) upon each of such coins its value in money of the Government of India is inscribed in the English language;

(*e*) the Native State for which they are coined has undertaken to abstain, during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold, silver, bronze, or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;

(*f*) such State has formally declared that a tender of payment of money, if made in coins of the Government of India of the same metal, shall in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India;

(*g*) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Government of India reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them; and

(*h*) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

Native States authorized to send metal to British India Mint for coinage.

5. It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act; and, subject to the Mint-rules for the time being in force, and to the provisions hereinafter contained, the Mint-Master shall receive such metal, and convert it into coin, provided that it be fit for coinage.

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Government of India of any metal which is not for the time being legally coined at such Mint.

Power to impose a charge for coinage.

6. The Governor-General in Council may impose on any metal sent to a Mint for coinage under this Act the duty (if any) leviable on the same metal under the Indian Coinage Act, 1870, and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining; and the Mint-Master shall coin such metal at the charge so imposed.

Power to limit number of coins to be made under this Act for any Native State.

7. The Governor-General in Council may, from time to time, with reference to the reasonable requirements of the population of any Native State, fix the maximum number of any coins of any particular metal that shall be coined under this Act.

Act X. of 1876.

ACT X. OF 1876.

THE BOMBAY REVENUE JURISDICTION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1876.

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble.

WHEREAS in certain parts of the Presidency of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency;

and whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing;

and whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, and to revive certain provisions of the thirteenth section of Regulation XVII. of 1827* of the Bombay Code, which was repealed by the Land Improvement Act, 1871, ~~and to provide for the recovery by the Local Government of advances made for purposes other than those specified in section 3 of the Land Improvement Act, 1871~~; Repealed by 4 of 1874

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1876:"

Commencement.

So much of section 4 as relates to claims to set aside, on the ground of irregularity, mistake, or any other ground except fraud, sales for arrears of land-revenue shall come into force on such day as the Governor-General in Council directs in that behalf by notification in the *Gazette of India*. The rest of this Act shall come into force on the passing thereof:

Extent.

and it shall extend to all the territories for the time being under the government of the Governor of Bombay in Council, but not so as to affect—

(*a*) any suit regarding the assessment of revenue on land situate in the collectorate of Bombay, or the collection of such revenue;

(*b*) any of the provisions of Bombay Acts V. of 1862 and VI. of 1862, or of "Act XXI. of 1881," † or of Act XXIII. of 1871;

~~(c) any suit instituted before the passing of this Act.~~

2. [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"land" includes the sites of villages, towns, and cities: it also includes trees, growing crops, and grass, fruit upon, and juice in, trees, rights-of-way, ferries, fisheries, and all other benefits to arise out of land, and things attached to the earth or permanently fastened to things attached to the earth:

"land-revenue" means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on

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* Repealed by Bom. Act V. of 1879.

† In cl. *b*, the words quoted have been substituted for the words, "Act XV. of 1871," by Act XII. of 1891, Sch. II.

account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force : Act X. of 1876.

" revenue-officer " means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts, or records connected therewith.

Bar of certain suits.

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :

(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III. of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjám, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service ;

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement ;

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by Government or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants ;

claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land-revenue ;

(*d*) claims against Government—

(1) to be entered in the revenue-survey or settlement-records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant, or tenant, or

(2) to have any entry made in any record of a revenue-survey or settlement, or

(3) to have any such entry either omitted or amended ;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV. of 1868,* or any other law for the time being in force ;

(*f*) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or

* Repealed by Bom. Act V. of 1879.

Act X. of 1876.

to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or

respecting the occupation of waste or vacant land belonging to Government;

(*g*) claims regarding boundaries fixed under Bombay Act No. I. of 1865,* or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks:

Proviso.

Provided that, if any person claim to hold land wholly or partially exempt from payment of land-revenue under

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(*i*) an instrument or sanad given by or by order of the Governor of Bombay in Council under Bombay Act No. II. of 1863, section 1, clause first, or Bombay Act No. VII. of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII. of 1827, † Chapter X., or under Act No. XI. of 1852, ‡ which declares the particular property in dispute to be exempt;

such claim shall be cognizable in the Civil Courts.

Illustrations to (*h*).

(1.) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain lands is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2.) It is enacted that, when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3.) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4.) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption, alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5.) It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

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* Repealed, except ss. 37 and 38, by Bom. Act V. of 1879.

† Repealed by Bom. Act V. of 1879.

‡ See Vol. I., p. 109.

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :— Act X. of 1876.

(*a*) suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment, or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue-survey or settlement in any village-papers;

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey-number or a recognized share of a survey-number;

and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March, 1876, they could have exercised over claims against Government—

(*a*) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III. of 1874, or any other law for the time being in force, or of any other village-officer or servant;

(*b*) to hold land wholly or partially free from payment of land-revenue:

(*c*) to receive payments charged on, or payable out of, the land-revenue.*

Bar of certain suits against Revenue-officers.

6. Revenue-officers shall not be liable to be sued for damages in any Civil Court for any act *bonâ fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue-officer absconds or does not attend when called on by his official superior, and if the Collector of the district proceeds against him or his sureties for public money, papers, or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties, although it appears that a part only, or no part whatever, of the sum demanded, was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Punishment or prosecution of Revenue-officers no bar to civil remedies.

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue-officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

8 to **10.** [*Repealed by Act XV. of 1880.*]

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* Part of this section was added by Act XVI. of 1877.

Act X. of 1876.

Suits not to be entertained unless plaintiff has exhausted right of appeal.

11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue-officer, unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as, within the period of limitation allowed for bringing such suit, it was possible to present.

Power of Government to refer questions for decision of High Court.

12. If, in the trial or investigation of any suit, claim, or objection which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor-General in Council, or the Local Government desires to have the decision of the High Court, the Governor-General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the Court-house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor, under the seal of the Court, to the Government by which the reference was made, and, subject to any appeal which may be presented to Her Majesty in Council, the case shall be disposed of conformably to such decision.

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

Power of Civil Judge to refer questions of jurisdiction to High Court.

13. If, in any suit instituted, or in any appeal presented, in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council, and, save as aforesaid, shall be final.

Composition of Bench.

14. Every reference under section 12 or section 13 shall be heard by a Bench consisting of such number of Judges, not less than three, as the Chief Justice from time to time directs.

Amendment of section 32, Act XIV. of 1869

15. For section 32 of the Bombay Civil Courts Act, No. XIV. of 1869, the following shall be substituted (namely):

[*See Vol. I., p 793.*]

Privileges of Government in suits defended by it.

16. Whenever any suit is brought in any District Court against Government,

or against any revenue-officer, and the Local Government undertakes the defence thereof,

it shall be lawful for the Local Government, by certificate signed by a Secretary thereto, to require—

(*a*) that such suit shall be tried by the District Judge himself, and shall not be transferred for trial to an Assistant Judge; and

(*b*) that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in such Court; Act X. of 1876.

and the Court shall give effect to every such requirement.

The privilege conferred on the Local Government by the clause (*b*) of this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

Revival of Bombay Regulation XVII. of 1827, section 13.

17.* Notwithstanding any repeal effected by the Land Improvement Act, 1871, arrears of land-revenue of former years shall be recoverable by the Collector in the same way as current land-revenue, except that the preference given to demands for current land-revenue, as specified in section 5 of Bombay Regulation XVII. of 1827,† shall not extend to demands on account of the arrears for former years.

Operation of same Regulation in sites of villages and towns.

So much of the said Regulation as is for the time being in force in any part of the territories to which this Act extends shall be deemed to be in force, and to have always been in force, in the sites of all villages, towns, and cities in such part.

Recovery of certain advances made by Local Government.

All advances made by the Local Government for purposes other than those specified in the Land Improvement Act, 1871, section 3, may be recovered from the persons to whom such advances are made as if they were arrears of land-revenue.

SCHEDULE.‡

[*Repealed by Act XII. of 1891, Sch. I.*]

THE SECOND SCHEDULE.§

The district of Ahmadábád.
The district of Kaira, exclusive of the Panch Maháls.
The district of Broach.
The district of Surat, exclusive of the lapsed State of Mandvi, as described in the schedule annexed to Act X. of 1848.
The district of Tanna.
The district of Kolába, exclusive of the lapsed State of Kolába mentioned in Act VIII. of 1853.
The district of Ratnágiri.
The district of Kanara.

* This section has been repealed by Act XV. of 1880, s. 2, which, however, makes the following proviso: "Provided that the repeal hereby effected of the first clause of the said section 17 shall not operate in any Scheduled District unless and until the Bombay Land-revenue Code, 1879, has been extended to such district: Provided also that the repeal of the second clause of the said section 17 shall not be deemed to render invalid or illegal anything made valid or legal by such clause."

† Repealed by Bom. Act V. of 1879.

‡ Now read "Schedule I."

§ Added by Act XVI. of 1877.

Act XI. of 1876.

ACT XI. OF 1876.*

THE PRESIDENCY BANKS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH APRIL 1876.

An Act for constituting and regulating the Banks of Bengal, Madras, and Bombay.

Preamble.

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV. of 1862, as amended by Acts No. VI. of 1862 and No. XIX. of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI. of 1866, as amended by Madras Act No. I. of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X. of 1863, as amended by Bombay Acts No. XV. of 1866 and No. I. of 1867; but such Bank has been wound up, and the said Bombay Acts are now obsolete, and should be expressly repealed;

And whereas, on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies Act, 1866,† under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras; and, under the provisions of the said Act No. IV. of 1862 and Madras Act No. VI. of 1866, is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor-General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender, and relief;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees, and to reduce the said capital of the Bank of Madras by six hundred and twenty-five thousand rupees, and to divide the

* Act XI. of 1876 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

† Repealed by Act VI. of 1882.

capital so reduced of each of the same Banks into shares of five hundred rupees each; Act XI. of 1876.

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay;

It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Presidency Banks Act, 1876;"

Commencement.

And it shall come into force on the first day of May 1876.

Repeal of enactments.

2. On and from that day the Statute specified in the first part of the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof, and the Acts specified in the second, third, and fourth parts of the same schedule shall be wholly repealed. But all bye-laws and regulations made under any such Act, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder.

References in Act X. of 1866.

The references made in the Indian Companies Act, 1866, to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay as constituted by this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act:

"Capital" means the capital for the time being of the Bank:

"Shares" means the shares for the time being of the capital, and includes also half shares:

"Capital stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively:

"Registered" means registered in the books of the Bank:

"Shareholders" means the duly registered holders from time to time of the shares of the Bank:

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors" means the directors assembled for the purpose of performing any of their functions under this Act:

"Board" means a meeting of the directors duly called and constituted, or, as the case may be, the directors assembled at a Board:

"Auditors" and "Secretary" mean those respective officers from time to time of the Bank, and "Secretary" includes a Secretary and Treasurer and a Deputy Secretary;

Act XI of 1876.

"General meeting" means the meeting of proprietors or shareholders or both, held annually under section 42; it includes any adjourned holding thereof:

"Special meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof:

"Special resolution" means a resolution passed at a special meeting:

"Office" means the office or principal office for the time being of the Bank:

"Goods" includes also bullion, wares, and merchandize:

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council:

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

CHAPTER II.—CONSTITUTION.

Proprietors and shareholders of present Banks to form bodies corporate:

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras, and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession under the name—

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras,"

and in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers, and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank;

and, in particular, the proprietors of the Bank shall not be liable for its debts and engagements, and the shareholders of the Bank shall be so liable only to the extent of their shares not fully paid up.

with limited liability.

Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively, in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two

shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras, Act XI of 1876.

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

Property of present Banks to vest respectively in new Banks.

5. All the property, moveable and immoveable, and all the securities, claims, and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might, be, on the said first day of May 1876, or might at any time thereafter have been, due to, or claimed by, the said Banks respectively, shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made, and recovered by—

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,

in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,

and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

Claims against present Banks.

and the Bank shall, from and after the said first day of May 1876, be liable and subject to all debts, claims, and demands which shall then be due or claimable from, or which, but for this Act, might be then, or might, at any time thereafter, have been, due or claimable from or made against the said Bank of Bengal, Bank of Madras, or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras, or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

New Bank of Bombay, Limited, wound-up.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding-up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding up the same under the Indian Companies Act, 1866, or any Act for the time being in force relating to the winding-up of Companies;

and no person shall make, assert, or take any claims, demands, or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

Banks to sue and be sued in corporate name, and use corporate seals;

7. The Bank shall sue and be sued by its said corporate name;

and shall use such corporate seal as the directors from time to time appoint;

Act XI. of 1876.

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immoveable, and transfer, assign, and convey the same.

and may hold and transfer property.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Seal how used.

Unless so signed as aforesaid, such instrument shall be of no validity.

9. Contracts may be made on behalf of the Bank as follows :—

Contracts how made.

(*a*) any contract, which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Bank in writing under its corporate seal, and such contract may be in the same manner varied or discharged;

(*b*) any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Bank by writing signed by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged;

(*c*) any contract, which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Bank by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged;

and all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Bank and other parties thereto and their legal representatives.

CHAPTER III.—CAPITAL.

10. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees.

Capital of Bank of Bengal.

The capital of the Bank of Madras shall consist of five millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees.

Capital of Bank of Madras.

The capital of the Bank of Bombay shall consist of ten millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees.

Capital of Bank of Bombay.

11. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of May 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid.

Capital of New Bank of Bombay, Limited, to be capital of Bank of Bombay.

12. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the amount represented by the shares so surrendered;

Surrender of paid-up shares for stock.

and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank, in lieu thereof, shares to the like amount, or as near thereto as practicable.

Surrender of stock for shares.

13. The proprietors and shareholders of the Bank may from time to time, by special resolution, and with the previous sanction of the Governor-General in Council, increase or reduce the capital of the Bank:

Power to increase or reduce capital.

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the proprietors or shareholders holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

14. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed—

Procedure on resolution to increase capital.

(*a*) make such orders as they think fit for the opening of subscriptions towards such increase of capital by the proprietors and shareholders;

(*b*) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seems fit;

(*c*) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(*d*) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid:

Provided that the capital shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

15. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

Procedure on resolution to reduce capital.

16. Any new capital created under the provisions of section 13 shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

New capital to be subject to provisions of Act.

Act XI. of 1876.

CHAPTER IV.—Forfeiture of Stock and Shares.

17. If any proprietor or shareholder is indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder not being registered as held in trust, or as executor or administrator, and apply them in payment of the debt;

Powers in regard to proprietors or shareholders indebted to Bank.

and the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public advertisement in the local official gazette, if the debt remain unpaid for the space of three months after such notice, the Bank may advertise in the local official gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction, and subject to such conditions, if any, as the Bank thinks fit, such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

CHAPTER V.—Certificates, Transfer, and Transmission of Shares and Stock.

18. Every shareholder shall be entitled, to a certificate, under the corporate seal of the Bank, and signed by two directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon;

Certificates for shares.

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: Provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him, and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly: Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

Receipts for stock.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section 63, clause (*k*): Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section 4 for shares in or stock of the Bank.

Fees for certificates and receipts.

Every such certificate and receipt shall be *primâ-facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified. Act IX of 1876.

Certificates and receipts to be evidence.

19. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property; and each share shall be distinguished by its appropriate number.

Stock and shares to be moveable property.

20. Every transfer of stock or shares may be by endorsement on the certificate or in such other form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferors.

Form of transfer to be approved by Board.

Every such transfer shall be verified in such manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

Board may require evidence of transmission.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

Transferor to remain proprietor till transfer registered.

21. The directors may from time to time close the register and transfer-books of the Bank for any period or periods no exceeding in the whole thirty days in any twelve consecutive months.

Power to close transfer-books.

22. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted;

Corporation to consist of registered proprietors or shareholders only.

and, except for the purpose of excluding the provisions of section 17, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof;

Notice of trusts.

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint-owners with benefit of survivorship:

Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person whose name stands first in the register as one of the proprietors or holders of such stock or shares shall be deemed the sole proprietor or holder thereof.

23. When, by the death of any proprietor or shareholder, his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out, from a Court having jurisdiction in this behalf, probate of the will or letters of administration to the estate of the deceased.

Transmission of stock or shares of deceased proprietors or shareholders.

Act XI. of 1876.

Transmission on insolvency or marriage.

Any person becoming entitled to stock or shares in consequence of the insolvency or bankruptcy of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

CHAPTER VI.—DIRECTORS.

Board.

24. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Such directors shall be selected by vote of a general or special meeting.

Quorum.

Three of the directors shall form a quorum for the transaction of business.

Present directors to be continued.

25. The persons who, on the first day of May 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided, and to the other provisions herein contained.

Two directors to go out by rotation annually.

26. The two directors who have been longest in office shall go out of office at the general meeting.

Any director so retiring may be re-elected at such meeting; and if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

Qualification of directors.

27. *Clause 1.*—No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the nominal amount of ten thousand rupees at the least.

Disqualification of directors.

Clause 2.—No person shall be qualified to serve as a director—

If he holds the office of director, provisional director, promoter, agent, or manager of any other joint-stock Bank established, or having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency, in British India; or

If he is a salaried officer of Government not specially authorized by the Governor-General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it resigns his office or dies;

If he accepts or holds any other office of profit under the Bank;

If he becomes insolvent or bankrupt, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of unencumbered stock or shares required to qualify him for the office.

Clause 3.—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

Co-partners of same firm not to serve as directors at same time.

Clause 4.—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

Power to remove directors.

28. At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year: Provided that no person shall be chosen to be president or vice-president twice in succession.*

Directors to choose president and vice-president.

The president, or in his absence the vice-president, shall be chairman at all meetings, whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes: Provided that, if both the president and vice-president be absent at any meeting, the directors present shall elect a chairman for such meeting, from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

Chairman.

Casting vote.

29. The Board shall have power at any time, and from time to time, to supply any vacancies in their number arising from the death, resignation, or disqualification, under section 27, of any director.

Vacancies among directors how filled up.

Any director so appointed shall, for the purposes of section 26, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

30. All acts done by any person acting in good faith as a director shall be as valid as if he was a director, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

Acts of directors valid notwithstanding subsequent discovery of disqualification.

31. Every director shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.

Indemnity of directors.

No director shall be responsible for any other director, or for any officer, clerk, or servant of the Bank, or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy, or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

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* This proviso has been added by Act V. of 1879, s. 2.

Act XI. of 1876.

CHAPTER VII.—Officers of the Bank.

Appointment, salaries, suspension, and removal of officers.

32. The directors shall have power—

to appoint such officers, clerks, and servants as may be necessary to conduct the business of the Bank,

to grant salaries, pensions, and other emoluments to such officers, clerks, and servants, and

to suspend or remove any officer, clerk, or servant of the Bank.

Accounts, receipts, and documents of Bank by whom to be signed.

33. The Secretary and such other officers of the Bank as the directors may by writing notify in the local official Gazette (and, in the case of the Bank of Bengal, also in the *Gazette of India*) are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities, and documents of title to goods, standing in the name of, or held by, the Bank,

and to draw, accept, and endorse bills of exchange, bank-post-bills, and letters of credit, in the current and authorized business of the Bank,

and to sign all other accounts, receipts, and documents connected with such business.

Officers forbidden to engage in other commercial business.

34. No Secretary, Inspector, Manager, or Accountant in the service of the Bank,

and, "without the previous sanction of the Board,"* no Khazánchí Cashier, or Shroff in the service of the Bank at the principal office,

and, without the previous sanction of the Board, no Agent, Khazánchí, Cashier, or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

Security from officers.

35. Every person appointed to hold, or act in, any one or more of the said offices, and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of Secretary shall not be in a less amount than fifty thousand rupees.

CHAPTER VIII.—Business.

Business which Banks may transact.

36. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say):—

(*a*) the advancing and lending money, and opening cash-credits, upon the security of—

(1) promissory notes, debentures, stock, and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

* In s. 34, the words quoted have been inserted by Act V. of 1879, s. 3.

(2) bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India; Act XI. of 1876.

(3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(4) debentures, or other securities for money issued by, or on behalf of, any municipal body "or any body of Commissioners for making improvements in any port, or of trustees of any port,"* under the authority of any Act of a legislature established in British India;

(5) bullion or other goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans, or credits; and

(6) accepted bills of exchange and promissory notes indorsed by the payees:

Provided that such advances and loans may be made, if the directors think fit, to the Secretary of State for India in Council, without any specific security;

(*b*) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stock, shares, securities, bullion, or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans, or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

(*c*) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or† in Ceylon;

(*d*) the investing of the funds of the Bank upon any of the securities specified in paragraph (*a*) of this section, clauses (1), (2), (3), and (4), and converting the same into money when required,

and from time to time altering, converting, and transposing such investments for or into others of the investments above specified;

(*e*) the making, issuing, and circulating of bank-post-bills and letters of credit made payable in India, or† in Ceylon, to order, or otherwise than to the bearer on demand;

(*f*) the buying and selling of gold and silver, whether coined or uncoined;

(*g*) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(*h*) the acceptance of the charge and management of plate, jewels, title-deeds, or other valuable goods on such terms as may be agreed upon;

(*i*) the selling and realizing of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of any of its claims;

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* In s. 36, cl. *a*, sub-cl. 4, the words quoted have been inserted by Act V. of 1879, s. 4.

† In cls. *c* and *e*, the words, "in the case of the Bank of Madras," being repealed by Act V. of 1879, s. 4, have been omitted.

Act XI. of 1876.

(*j*) the transacting of pecuniary agency business on commission;

(*k*) the acting as agent on commission in the transaction of the following kinds of business (namely):—

(1) the buying, selling, transferring, and taking charge of any securities or any shares in any public Company;

(2) the receiving of the proceeds, whether principal, interest, or dividends, of any securities or shares;

(3) the remittance of such proceeds at the risk of the principal by public or private bills of exchange, payable either in India or elsewhere;

(*l*) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of principals for the purpose of the remittances mentioned in the last preceding clause of this section;

(*m*) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months;

(*mm*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise,*

(*n*) and, generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business hereinbefore specified.

(*o*) It shall also be lawful for the Bank under any arrangement or agreement with the Secretary of State for India in Council—

(1) to act as banker for, and to pay, receive, collect, and remit money, bullion, and securities on behalf of, the Government;

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank.

And the directors shall have power from time to time to arrange and settle with the Governor-General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor-General in Council.

Business which Banks may not transact.

37. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

(*a*) for a longer period than three months; or

(*b*) upon the security of stock or shares of the Bank of which they are directors; or

(*c*) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

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* Cl. *mm* has been inserted by Act V. of 1879, s. 4.

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed.* Act XI. of 1876.

(*e*) Nor shall they discount or buy, or advance and lend, or open cash-credits, on the security of any negotiable instrument of any individual or partnership-firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(*f*) Nor shall they discount or buy, or advance and lend, or open cash-credits, on the security of any negotiable security having at the date of the proposed transaction a longer period to run than three months, or if drawn after sight, drawn for a longer period than three months: Provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having at the date of the transaction a period to run not exceeding four months.

Nothing contained in this Act shall be deemed to prevent the directors from allowing any person who keeps an account with the Bank from overdrawing such account, without security, to the extent of sums not exceeding at any one time two thousand rupees in the whole.

Overdrawing.

38. Until the expiration of at least fourteen days after notice has been given by notification of the Governor-General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect, or remit money, bullion, and securities on behalf of, the Government,

Sums payable by or to Government to be payable at Banks.

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor-General in Council, or the Government of Bengal or the Governor of Fort St. George in Council, or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay,

shall be payable—

in the case of the Secretary of State for India in Council, or the Governor-General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be,

in the case of the Government of Bengal—at the office of the Bank of Bengal;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

39. Whenever presentment of any promissory note, bond, or other security for payment or any other purpose at any of the said General Treasuries would heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or

Presentment of promissory notes at Banks.

* Cl. *d* has been substituted for the original by Act V. of 1879, s. 5.

Act XI. of 1876.

sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section 38—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal;

in the case of the General Treasury at Madras—at the office of the Bank of Madras; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

Place of business.

40. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and at such other place or places in India as the Board may deem advisable, under the provisions of section 42.

Acquisition of business-premises.

41. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, and proper residences for its agents, the directors may—

(*a*) acquire any interest in immoveable property, and

(*b*) sell, buy in, re-sell, exchange, let, furnish, repair, insure against fire, and otherwise deal with all or any part of the same as they may consider most conducive to the interest of the Bank.

Establishment of branches and agencies.

42. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of May 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor-General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India*), to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Proviso.

Provided that no agency of the Bank now or hereafter established in Bombay, Calcutta, or Madras shall advance, or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency in which it is so established,

or shall act as agent on commission, or transact any business except as agent of its principal Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

CHAPTER IX.—Accounts and Dividends.

Books to be balanced twice a year.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government. Act XI. of 1876.

The Governor-General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into, remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank;

and in the case of each of the said Banks, the Governor-General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor-General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

Dividends to be determined half-yearly.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June,

and a dividend shall be made as soon thereafter as conveniently may be, and the amount of such dividend shall be determined by the directors, subject to the provisions of section 45.

No unpaid dividend shall bear interest as against the Bank.

Reserve-fund.

45. The directors, before declaring any dividend, may set aside, out of the profits of the Bank, such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section 36, paragraph (*a*), clauses (1), (2), (3), and (4).

Application of reserve-fund.

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalizing dividends, or for any other purposes of the Bank, which they from time to time deem expedient.

CHAPTER X.—AUDIT.

Election of auditors.

47. Two auditors shall be elected, and their remuneration fixed, at the annual general meeting.

Who may be auditors.

The auditors may be proprietors or shareholders; but no director or other officer of the Bank is eligible during his continuance in office.

Auditors re-eligible.

Any auditor shall be re-eligible on his quitting office.

Auditors' tenure of office.

The persons who shall be auditors on the first day of May 1876, and all auditors elected under this section, shall severally be, and continue to act as, auditors until the first general meeting after their respective elections:

Act XI. of 1876.

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

Supply of casual vacancy in office.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

Rights and duties of auditors.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts, and other documents of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act, and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.—MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June.

Annual general meeting.

A notice convening such meeting, signed by the Secretary, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the *Gazette of India*, at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English daily newspapers and one of the vernacular newspapers:

Special meetings.

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank, and shall also be served on every proprietor and shareholder.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business.

Quorum.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved: in any other case it shall stand adjourned

to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

Decision by majority of votes.

52. At meetings, whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section 13 and in section 27, clause 4, is specially provided;

Persons not allowed to vote.

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

Shareholders in arrear as to calls.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

Power to declare resolution carried by show of hands.

53. A declaration by the chairman of any meeting, except a special meeting held under section 13, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

Poll to be taken, if demanded.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Proceedings and resolutions at meetings to be binding.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions, and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

Scale of votes.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale:—

The proprietor of capital stock amounting to Rs. 2,000, or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to	1 Vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to	2 Votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to	3 ,,
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to	4 ,,

Act XI. of 1876.

The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to ... ... 5 Votes.

The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to ... ... 6 „

The proprietor of capital stock amounting to Rs. 75,000, or the holder of shares of which the total nominal amounts are equal to Rs. 75,000, shall be entitled to ... ... 7 „

The proprietor of capital stock amounting to Rs. 1,00,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,00,000, shall be entitled to ... 8 „

The proprietor of capital stock amounting to Rs. 1,25,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,25,000, shall be entitled to ... 9 „

The proprietor of capital stock amounting to Rs. 1,50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,50,000, shall be entitled to ... ... 10 „

The proprietor of capital stock amounting to Rs. 1,75,000, or the holder of shares of which the total amounts are equal to Rs. 1,75,000, shall be entitled to ... ... 11 „

The proprietor of capital stock amounting to Rs. 2,00,000, or the holder of shares of which the total amounts are equal to Rs. 2,00,000, shall be entitled to ... ... 12 „

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than twelve votes at any such meeting.

Proxies of proprietors or shareholders.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used:

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Existing proxies.

Proxies existing and in force with reference to any of the present Banks, on the first day of May 1876, shall continue in force, and be available at meetings under this Act, anything herein contained notwithstanding.

A general power-of-attorney shall be deemed a proxy within the meaning of this section.

Act XI of 1876.

Voting by lunatic and minor shareholders.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

CHAPTER XII.—NOTICES.

Service of notices by Bank.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode ;

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

Notices by shareholders.

60. Any proprietor or shareholder who changes his name or place of abode, or being a female marries, and the husband of any such female, respectively, shall not be entitled to recover any dividend or to vote until notice of the change of name or abode or marriage be given to the Bank, in order that the same may be registered.

Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary of the Bank at its principal office.

Shareholder bound by notices to previous holders.

61. Every person who, by operation of law, transfer, or otherwise, becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

Service of notices good notwithstanding shareholder's death.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

CHAPTER XIII.—BYE-LAWS.

Power of directors to make bye-laws.

63. The directors shall, as soon as may be, make, and may from time to time alter, bye-laws regulating the following matters or any of them :—

(*a*) the maximum amount which may be advanced or "lent to, or for which bills may be discounted for,"* any individual or partnership, without the security mentioned in section 36, paragraph (*a*), Nos. (1) to (5) inclusive,

(*b*) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to

* In s. 63 the words quoted have been substituted for the words, "lent by discount of bills or otherwise to," by Act V. of 1879, s. 6.

Act XI. of 1876.

companies, firms, or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(*c*) the particulars to be contained in the half-yearly balance-sheet.

The directors may, from time to time, make bye-laws regulating the following matters or any of them:—

(*d*) the distribution of business amongst the directors,

(*e*) their remuneration,

(*f*) the delegation of any powers of the directors to committees consisting of members of their body,

(*g*) the procedure at the meetings of the Board or of any committee of the directors,

(*h*) the books and accounts to be kept at the head and other offices respectively.

(*i*) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(*j*) the management of the branches and agencies,

(*k*) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(*l*) the renewal of certificates of shares and receipts for stock, which have been worn-out or lost,

(*m*) and, generally, for the conduct of the business of the Bank:

Proviso.

Provided that no bye-law, or alteration or rescission of any bye-law, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor-General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India.

CHAPTER XIV.—MISCELLANEOUS.

Power to institute and compromise suits.

64. The directors may institute, conduct, defend, compromise, refer to arbitration, and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

Evidence in legal proceedings against shareholders.

65. In any suit brought against any shareholder to recover any debt due for any call or other moneys due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other moneys due, whereby a right to sue has accrued to the Bank;

and, on the hearing of any suit brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

Modification of 33 Geo. III., sess. 2, cap. 52.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

Power to wind-up Bank under Indian Companies Act.

67. Notwithstanding anything contained in this Act or in section 256 of Act No. VI. of 1882,* whenever the proprietors and shareholders have passed a special resolution that the Bank shall be wound up voluntarily under the Indian Companies Act, 1882,* the Bank shall be wound up accordingly, as if it were a Company under that Act:

Provided that no such special resolution shall be deemed to have been passed unless at least one-third of the proprietors and shareholders holding at least one-half of the paid-up capital of the Bank for the time being be present in person or by proxy, and a majority poll by open voting in favour of the said resolution, and such resolution has been confirmed by a majority of such proprietors and shareholders at a subsequent special meeting held at an interval of not less than one month, nor more than two months, from the date of the meeting at which such resolution was first passed.

Sale to Bank of Bengal and Madras of Government shares therein.

68. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two-and-a-half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal, as constituted by this Act, shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two-and-a-half shares held by the Government of India in the same Bank, and it is intended that the directors of the Bank of Madras, as constituted by this Act, shall cancel the same shares;

Purchase and cancellation by directors of 62½ shares in present Bank of Madras.

And whereas the directors of the present Bank of Madras have purchased and cancelled other sixty-two-and-a-half shares in such Bank;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements with the Government of India, and the directors of the Bank of Bengal, as constituted by this Act, have no power to sell the four hundred shares referred to in this section, and the said directors of the present Bank of Madras had no power to purchase and cancel the said other sixty-two-and-a-half shares;

And whereas the directors of the Bank of Bengal as constituted by this Act have no power to cancel the said two thousand shares, and the said direct-

* See Act VI. of 1882, s. 6.

Act XI. of 1876.

ors of the Bank of Madras, as constituted by this Act, have no power to cancel the said five hundred and sixty-two-and-a-half shares;

And whereas it is expedient to confirm the said agreements with the Government of India, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to confirm the said purchase of the said other sixty-two-and-a-half shares by the directors of the present Bank of Madras, and to indemnify the same directors for making the same, and for cancelling the same shares, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled; It is hereby further enacted as follows:—

Confirmation of agreements with Government.

(*a.*)—The said agreements with the Government of India are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in pursuance of either of such agreements.

Confirmation of purchase of the 62½ shares.

(*b.*)—The said purchase of the said other sixty-two-and-a-half shares is hereby confirmed, and the said directors of the present Bank of Madras are hereby indemnified for making the same, and for cancelling the same shares; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in effecting such purchase and cancellation.

Sale by directors of 400 shares in Bank of Bengal.

(*c.*)—The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

Cancellation of certain shares.

(*d.*)—The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two-and-a-half shares.

SCHEDULE.

(SEE SECTION 2.)

Part I.—Statute.

Number and year.	Abbreviated Title.	Extent of repeal.
47 George III., sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections 8, 9, and 10.

SCHEDULE—*continued.*

(SEE SECTION 2.)

Part II.—Acts of the Governor-General in Council.

Number and year.	Title.
IV. of 1862 ...	An Act for regulating the Bank of Bengal.
V. of 1862 ...	An Act to provide for the payment at the Banks of Bengal, Madras, and Bombay, of moneys payable at the General Treasuries of Calcutta, Madras, and Bombay.
VI. of 1862 ...	An Act to annex a schedule to Act IV. of 1862.
XXIX. of 1863 ...	An Act to declare the receipts of the Banks of Bengal, Madras, and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George, and Bombay, respectively.
XIX. of 1870 ...	An Act to enable the Directors of the Bank of Bengal to act by a quorum.

Part III.—Acts of the Governor of Fort St. George in Council.

Number and year.	Title.
VI. of 1866 ...	An Act for repealing Madras Act V. of 1862, and for regulating the Bank of Madras.
I. of 1871 ...	An Act to amend Madras Act VI. of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.

Part IV.—Acts of the Governor of Bombay in Council.

Number and year.	Title.
X. of 1863 ...	An Act for the Re-incorporation and Re-constitution of the Bank of Bombay.
XV. of 1866 ...	An Act to amend Act No. X. of 1863 (Bombay).
I. of 1867 ...	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares therein, and to amend Act X. of 1863 and Act XV. of 1863 (Bombay).

Act XVI. of 1876.

ACT XV. OF 1876.

THE BOMBAY MUNICIPAL DEBENTURES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1876.

An Act to amend the Law relating to the transfer of Bombay Municipal Debentures, and to provide for their consolidation.

Preamble.

WHEREAS, under the Bombay Municipal Act of 1865, the Justices of the Peace for the city of Bombay were empowered to mortgage for the purposes therein mentioned the rates and taxes imposed and levied under that Act;

and whereas, by section 255 of the same Act, it was enacted that any person entitled to any such mortgage might transfer his right and interest therein to any other person, and that every such transfer should be by deed duly stamped, wherein the consideration should be truly stated, and that every such transfer might be according to the form in Schedule K to the said Act annexed or to the like effect;

and whereas, in exercise of the said power, divers mortgages of the said rates and taxes have been made, and the mortgagees have purported to transfer their mortgages to other persons, but such transfers have been by simple indorsement, and not by deed duly stamped;

and whereas it is expedient to provide that such transfers may hereafter be made by indorsement, and to confirm the said transfers heretofore made, and to exempt the parties thereto from the penalties which they have incurred by reason of their failure to comply with the provisions of the said section and of the law relating to stamp-duties for the time being in force;

and whereas it is also expedient to provide for consolidating such mortgages in manner hereinafter mentioned, and for renewing and sub-dividing mortgages so consolidated;

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bombay Municipal Debentures Act, 1876."

Transfers of debentures to be by indorsement, and free from stamp-duty.

2. Every mortgage of rates and taxes, authorized to be made under the said Bombay Municipal Act of 1865, or any subsequent Act, shall be transferable by indorsement on the instrument of mortgage.*

Validation of former transfers by indorsement.

3. Every transfer of any such mortgage heretofore made by indorsement shall be, and be deemed to have been, as valid as if this Act had been in force at the date of such transfer; and no stamp-duty shall be, or be deemed to have been, chargeable in respect of any such transfer; and no penalty shall be deemed to have been incurred by reason of any failure to comply with the provisions of the said section 255, or of the law relating to stamp-duties for the time being in force.

Power to consolidate debentures.

4. Any holder of two or more such instruments of mortgage may surrender them to the municipal corporation of the city of Bombay, and such corporation shall accept the same, and shall (on receipt for each such instrument of such fee as the said corporation may from time to time prescribe) grant to such holder, under the seal of

* Here certain words, repealed by Act I. of 1879, have been omitted.

the said corporation, an instrument of mortgage in which the consideration stated shall be the aggregate amount of the considerations respectively stated in the instrument so surrendered.

Every instrument so granted may be in the form in the schedule hereto annexed or to the like effect.

Power to renew and sub-divide.

5. The said corporation shall, on the application of the holder of any instrument granted under the said Bombay Municipal Act of 1865 or under this Act, and on receipt of such fees as the said corporation may from time to time prescribe in this behalf, renew or sub-divide the same.

THE SCHEDULE ABOVE REFERRED TO.

WHEREAS *A B* of has surrendered to us, the Municipal Corporation of the city of Bombay, mortgages issued under the Bombay Municipal Act of 1865, bearing respectively the following numbers and dates (namely) [*set them out*], and securing sums amounting in the whole to Rs. . In consideration of the premises, we, the said Corporation, do hereby grant and assign unto the said *A B*, his representatives and assigns, such proportion of the rates and taxes comprised in the said mortgages as the said sum of Rs. bears to the whole sum for the time being borrowed upon the credit of the said rates and taxes. To HOLD to the said *A B*, his representatives and assigns, from this day, until the said sum of Rs. , with interest at the rate of per cent. per annum, shall be fully paid and satisfied.

Given under our corporate seal this day of 187 .

ACT XVI OF 1876.*

RECEIVED THE G.-G.'S ASSENT ON THE 5TH OCTOBER 1876.

An Act to amend the Stage-carriages Act.

Preamble.

WHEREAS Act No. XVI. of 1861 (*for licensing and regulating Stage Carriages*) does not apply to carriages drawn by camels or oxen, and it is expedient to render it applicable to such carriages; It is hereby enacted as follows :—

Amendment of Act XVI. of 1861, s. 21.

1. For the third sentence of section 21 of the said Act, the following shall be substituted (that is to say) :—

"All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India."

Local extent of Act XVI. of 1861.

2. The said Act, as amended by this Act, applies to the whole of British India, but not so as to supersede or contravene the provisions of any local law dealing with the same subject.

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* Act XVI. of 1876 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts : The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1886, Pt. I., p. 504.

Act XVII. of 1876.

ACT XVII. OF 1876.

THE OUDH LAND-REVENUE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH OCTOBER 1876.

An Act to consolidate and define the Law relating to Land-revenue in Oudh.

WHEREAS it is expedient to consolidate and define the law relating to land-revenue in Oudh; It is hereby enacted as follows:— Preamble.

CHAPTER I.—PRELIMINARY.

Short title. **1.** This Act may be called "The Oudh Land-revenue Act, 1876:"

Local extent. It extends only to the territories now under the administration of the Chief Commissioner of Oudh;

Commencement. And it shall come into force on the passing thereof.

But all rules now in force, and relating to any of the matters hereinafter dealt with, shall, so far as they are consistent with this Act, continue in force until they are superseded by rules made in exercise of the powers hereinafter conferred.

Interpretation-clause. **2.** In this Act, unless there be something repugnant in the subject or context—

"incumbrance" means a charge upon or claim against land arising out of contract between private persons:

"agricultural year" means a year commencing on the first day of July, and ending on the thirtieth day of June:

"revenue-officer" means any officer empowered by or under this Act to dispose of any matter connected with the land-revenue:

"revenue-free" or "free of revenue" applies to land whereof the revenue has been wholly or in part released, compounded for, redeemed, or assigned:

"Board" means the Board of Revenue.*

CHAPTER II.—REVENUE OFFICERS.

3. The Chief Controlling Revenue Authority in all matters connected with land-revenue in Oudh shall be "the Board, subject to the control of the Chief Commissioner."† Chief Controlling Revenue Authority.

Sections 6 to 10, both inclusive, of the North-Western Provinces Land-revenue Act, 1873, shall, so far as may be, apply to the Board when exercising jurisdiction with respect to Oudh.‡

Commissioners of Division. **4.** §The Chief Commissioner shall—

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* This definition has been added by Act XX. of 1890, s. 12.

† In s. 3, the words quoted have been substituted for the words, "the Chief Commissioner," by Act XX. of 1890, s. 13.

‡ In s. 3, the second paragraph has been added by Act XX. of 1890, s. 13.

§ In s. 4 (first and last clauses), the words, "Subject to such rules as the Governor-General in Council may, from time to time, prescribe in this behalf," repealed by Act XIV. of 1878, s. 4, have been omitted.

(*a*) appoint in each Division a Commissioner, who shall, subject to the control of the "Board,"* exercise authority over all the Revenue Officers in his Division : Act XVII. of 1876.

Deputy Commissioner of the district.

(*b*) appoint in each district an officer who shall be the Deputy Commissioner of the district :

Assistant Commissioner.

(*c*) appoint to each district as many other persons as he thinks fit to be Assistant Commissioners of the first or of the second class.

† The Chief Commissioner may suspend or remove any officer appointed under this section.

Appointment, powers, and duties of Additional Commissioners.

4A.‡ (*1*) The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, appoint an Additional Commissioner in a division.

(*2*) An Additional Commissioner shall hold his office during the pleasure of the Chief Commissioner.

(*3*) An Additional Commissioner shall exercise such powers, and perform such duties, of the Commissioner of a division under this Act, or under any other law for the time being in force, as the Chief Commissioner may, from time to time, prescribe, but only in such cases as the Commissioner of the division may direct.

(*4*) This Act and every other law for the time being applicable to the Commissioner of the division shall apply to the Additional Commissioner when exercising any powers or performing any duties under sub-section (*3*), as if he were the Commissioner of the division.

Power to create, alter, and abolish, divisions, districts, tahsils, and sub-divisions.

4B.‡ (*1*) The Chief Commissioner may from time to time create new, or abolish existing, tahsils, and alter the limits of any division, district, or tahsil, and may divide any district into sub-divisions, and from time to time alter the limits of the sub-divisions, and may from time to time, with the previous sanction of the Governor-General in Council, create new, or abolish existing, divisions or districts.

(*2*) All existing tahsils shall be deemed to be sub-divisions of districts.

Subordination of Assistant Commissioners and other Revenue Officers.

5. All such Assistant Commissioners, and all other persons employed in maintaining revenue-records or otherwise in or about the business of the land-revenue, shall be subordinate to the Deputy Commissioner of the district.

Assistant Commissioner in charge of sub-division of district.

6. The Chief Commissioner may place any Assistant Commissioner of the first class in charge of one or more sub-divisions of a district, and may at any time remove him therefrom.

Such Assistant Commissioner shall be called an Assistant Commissioner in charge of a sub-division of a district, and shall exercise the powers and discharge the duties conferred and imposed upon him by this Act or by any other

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* In s. 4, cl. *a*, the word "Board" has been substituted for the words "Chief Commissioner" by Act XX. of 1890, s. 15.

† In s. 4 (first and last clauses) the words, "Subject to such rules as the Governor-General in Council may, from time to time, prescribe in this behalf," repealed by Act XIV. of 1878, s. 4, have been omitted.

‡ Ss. 4A and 4B have been inserted by Act XX. of 1890, s. 14.

Act XVII. of 1876.

law for the time being in force, subject to the control of the Deputy Commissioner of the district.

The Chief Commissioner may, from time to time, delegate* his powers under this section to the Deputy Commissioner of the district, and may revoke such delegation.

Power to invest certain Assistant Commissioners with powers of Deputy Commissioner.

7. † The Chief Commissioner may confer on any Assistant Commissioner in charge of a sub-division of a district all or any of the powers of a Deputy Commissioner; and all powers so conferred shall be exercised subject to the control of the Deputy Commissioner of the district.

Subordination of Revenue Officers.

8. Every officer of a sub-division of a district employed in maintaining revenue-records or otherwise in or about the business of the land-revenue shall be subordinate to the Assistant Commissioner (if any) in charge of such sub-division, subject to the general control of the Deputy Commissioner of the district.

Conferring of powers.

9. †The Chief Commissioner may confer upon any person all or any of the powers of an Assistant Commissioner of the first or of the second class, and may, in conferring those or any other powers under this Act, empower persons by name, or classes of officials generally by their official titles, and may vary or cancel any order conferring powers under this Act.

Power to vary and cancel orders conferring powers.

Transfer of cases to subordinates.

10. The Deputy Commissioner of the district, or any Assistant Commissioner in charge of a sub-division of a district, may make over any case, or class of cases, arising under the provisions of this Act or otherwise, for enquiry or decision, from his own file to any of his subordinates competent to deal with such case or class,

or may withdraw any such case or class of cases from any Revenue Officer subordinate to him, and may deal with such case or class himself, or refer the same for disposal to any other such Revenue Officer competent to deal therewith.

Power to withdraw cases from subordinates.

Deputy Commissioner of the district in case of temporary vacancy.

11. If the Deputy Commissioner of the district dies, or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district in revenue-matters shall be held to be the Deputy Commissioner of the district under this Act until the Chief Commissioner appoints a successor to the Deputy Commissioner so dying or disabled, and such successor takes charge of his appointment.

Powers of officers transferred to another district.

12. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Chief Commissioner otherwise directs, be held to be invested with the same powers in the district to which he is so transferred.

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* See *Oudh Gazette*, Oct. 28, 1876, p. 73.

† In ss. 7 and 9, the words, "Subject to such rules as the Governor-General in Council from time to time prescribes in this behalf," repealed by Act XIV. of 1878, s. 4, have been omitted.

Act XVII. of 1876.

Appointment of tahsildárs.

13.* Tahsildárs shall be appointed by the Board, subject to such rules as to qualification or otherwise as the Board, with the previous sanction of the Chief Commissioner, may, from time to time, make under section 220.

CHAPTER III.—SETTLEMENT.

Notification as to settlement.

14. Whenever the Chief Commissioner thinks that any district or other local area liable to be brought under settlement should be so brought, he shall† publish a notification to that effect.

Notification as to settlement-record.

And if he thinks that a settlement-record should be prepared for any district or other local area, he shall‡ publish a notification to that effect.

Chief Commissioner to issue rules as to mode of assessment.

15. The Chief Commissioner shall, from time to time, with the previous sanction of the Governor-General in Council, frame and issue rules regarding the mode in which the revenue-demand in respect of any local area is to be assessed, and may, from time to time, make rules prescribing the manner in which Settlement Officers shall report for sanction the rates and method of assessment and the amounts they propose to assess.

Settlement-record.

16. "The Board shall, with the previous sanction of the Chief Commissioner,"§ determine what documents shall form the settlement-record, and frame and issue rules regarding (*a*) the mode in which such record is to be prepared, (*b*) the facts to be therein entered, and (*c*) the manner in which the entries shall be attested.

The "Board"‖ may, from time to time, with the same sanction, alter such rules.

Presumption as to entries in settlement-record.

17. Every entry in such settlement-record duly made and attested shall, until the contrary is proved, be presumed to be a correct record of the fact entered.

Settlement to be deemed in progress until closing notified.

18. Every local area shall be held to be under settlement from the date of any notification published under section 14, and relating thereto, until the issue of another notification declaring settlement-operations to be closed therein.

Settlements now in progress brought under operation of Act.

Every local area under settlement at the time of the passing of this Act shall be held to be under settlement within the meaning of this section without the issue of either of the notifications prescribed by section 14.

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* S. 13 has been substituted by Act XX. of 1890, s. 16.

† In s. 14, the words, "with the previous sanction of the Governor-General in Council," repealed by Act XIV. of 1878, s. 4, have here been omitted.

‡ In s. 14, the words, "with the like sanction," repealed by Act XX. of 1890, s. 17, have here been omitted.

§ In s. 16, para. 1, the words quoted have been substituted by Act XX. of 1890, s. 18.

‖ In s. 16, para. 2, the word "Board" has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 18.

Act XVII. of 1876.

Appointment and powers of Settlement Officers.

19. The Chief Commissioner may, from time to time,* appoint an officer to be in charge of the settlement of any local area and as many Assistant Settlement Officers as the Chief Commissioner thinks fit; and such officers shall exercise the powers conferred on them respectively under this Act, so long as such area is under settlement.

Power to invest Settlement Officers with powers of Civil Courts in certain cases.

20. In any local area in which a settlement of the land-revenue is in progress, the Chief Commissioner* may, by order, confer, on any officer making or controlling such settlement, the powers of a Civil Court of any specified grade for the purpose of trying suits and appeals, or any specified class of suits and appeals, relating to property in land assessed or assessable to revenue, in such district, and may revoke any such order; and, so long as such order remains in force, the jurisdiction of the Civil Courts of the same grade shall be excluded in respect of such suits and appeals.

Power to transfer cases from Settlement Officers to Civil Courts.

21. Notwithstanding the existence of any such order, the Chief Commissioner may from time to time direct that any cases pending before the Settlement Officers invested with the powers mentioned in section 19 shall be transferred to the ordinary Civil Courts of the district if the state of business in his opinion requires such transfer.

Trial of suit relating to land and to other property.

22. If a suit relating as well to such land as other property be instituted before any officer so invested, he shall make a reference regarding the disposal of such suit to the Commissioner of the Division in which the district wherein the suit was instituted is included, who shall determine by what Court the suit shall be tried.

Powers of Settlement Officers as to erection of boundary-marks and decision of disputes.

23. When any local area is under settlement, the Settlement Officer shall have power to call upon all proprietors, by proclamation to be stuck up in some conspicuous place in each village, to erect, within fifteen days from a date to be fixed in the proclamation, such boundary-marks as he may think necessary to define the limits of that village, or the mahâls or fields contained therein; and, in default of their compliance within the time specified in the notice, he may cause such boundary-marks to be erected, and he shall recover the cost of such erection from the proprietors as if it were an arrear of land-revenue.

In case of dispute concerning any boundary-marks, the Settlement Officer shall decide such dispute on the basis of possession, or may refer it to arbitration, for decision on the merits as provided for in sections 191 to 292, both inclusive.

Power of Settlement and Survey Officers to do necessary acts.

24. All Settlement Officers and all officers in charge of a survey made in connection with the revenue, and their assistants, servants, agents, and workmen, may do all acts necessary for any purpose connected with the settlement or survey, as the case may be.

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* In ss. 19 and 20 the words "with the previous sanction of the Governor-General in Council," repealed by Act XIV. of 1878, s. 4, have here been omitted.

Act XVII. of 1876.

Power to require attendance of persons concerned, and production of documents.

25. The Settlement Officer may order all persons whose presence is in his opinion necessary for any of the purposes of this chapter to attend at any specified time and place, and to produce any written document in their possession or power; and all such persons shall be legally bound to obey such order.

With whom settlement to be made.

26. The settlement shall be made

(*a*) in the case of a taluqdárí mahál, with the taluqdár;

(*b*) in the case of other mahals, with the proprietor of the mahál; or if in any such mahál there are two classes of proprietors, superior and inferior, with either of such classes as the Chief Commissioner directs;

or if the taluqdár or proprietor has transferred possession of his mahál to a mortgagee or conditional vendee, then with such mortgagee or vendee.

Settlement of estate in possession of lunatic or minor.

If, at the time of settlement, a mahál, or any share thereof, be in the possession of a lunatic, minor, or other person incapable of making a contract, the settlement shall be made on his behalf with his guardian or with the manager of his property.

Power to make joint settlement with several proprietors or their representatives.

27. When several persons are in possession of a mahál, not being a taluqdárí mahál, the Settlement Officer shall have power to make a joint settlement with all such persons or with their representatives.

Framing and reporting general proposals of assessment.

28. The Settlement Officer shall, in accordance with the rules made under section 15, frame general proposals of assessment for any local area or any portion thereof regarding which a notification has been published under the first clause of section 14, and shall report such proposals through the Commissioner of the Division to the "Board."*

Detailed assessment and declaration thereof to persons concerned.

29. After the receipt of the orders of the "Board"* thereon, and subject to such orders, the Settlement Officer shall ascertain the amount of the assessment proper for each mahál in such area, and shall declare the same to the person with whom the settlement of such mahál is to be made.

If any mahál in any such area comprise two or more villages, or portions of villages, the Settlement Officer shall declare the assessment due on each of such villages or portions of villages, together with the aggregate amount of the assessment proper in his opinion for the whole mahál.

Such declaration shall be made on a date to be notified by proclamation at the tahsil in which such mahál is situate.

Effect of agreement to assessment proposed.

30. If the persons with whom the settlement of such mahál is to be made agree to the assessment so proposed, they and those (if any) whom they represent in interest shall become liable from the date of such agreement, or from such subsequent date as the "Board"* directs, to pay such assessment in respect of such mahál;

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* In ss. 28, 29, and 30 the word "Board" has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 15.

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and in a mahál in which the land, or part of the land, is held in severalty, the Settlement Officer shall distribute such assessment on the lands so held.

Distribution of assessment.

31. In any mahál where, by the established custom, the land or the amount of revenue payable by each co-sharer is subject to periodical re-distribution or re-adjustment, the Settlement Officer may, on application of one or more of the co-sharers, enforce such re-distribution or re-adjustment according to such custom.

Enforcement of custom as to re-distribution of land and adjustment of revenue of shares.

32. If the person to be settled with be a taluqdár, and such taluqdár refuse to accept the assessment offered by the Settlement Officer in respect of his entire taluqá, or in respect of any portion thereof, or if, within thirty days from the date of the declaration by the Settlement Officer under section 29, such taluqdár fail to accept such assessment, the Settlement Officer shall report the case through the Commissioner of the Division " and the Board " * to the Chief Commissioner.

Exclusion of taluqdár declining or failing to accept settlement.

The Chief Commissioner, after hearing and considering the reasons which the taluqdár may have to urge against the assessment, may direct that the taluqdár so refusing or failing be excluded from the settlement of his entire taluqá, or of any portion thereof, for such term, not exceeding fifteen years from the date of such direction, as the Chief Commissioner shall fix; and the Settlement Officer or Deputy Commissioner shall either farm the taluqá or any portion thereof, or hold it under direct management during such term, or any part thereof: provided that no taluqdár shall be excluded from the settlement of his entire taluqá without the previous sanction of the Governor-General in Council.

33. If a taluqdár be excluded from the settlement of any portion of his taluqá, and if such portion be held in sub-settlement by an under-proprietor, the farm of such portion shall be offered to such under-proprietor, on such terms as the Chief Commissioner may in each case direct.

Offer of farm to under-proprietor.

34. If such under-proprietor accept the assessment so offered, the taluqdár so excluded shall be entitled to an allowance, out of the profits of such portion, to be fixed by the Chief Commissioner, not exceeding the share of the gross assets, if any, to which he would have been entitled had he accepted the assessment.

Allowance to excluded taluqdár.

In other cases, the taluqdár so excluded shall (subject to the orders of the Chief Commissioner) be entitled to an allowance out of the profits of such portion, of not less than five or more than fifteen per cent. on the amount proposed to be assessed thereon.

35. In a mahál other than a taluqdárí mahál, if the person to be settled with refuse to accept the assessment offered by the Settlement Officer, or fail to accept such assessment within thirty days from the date of the declaration by

Exclusion of person declining or failing to accept settlement in a mahál.

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* In s. 32, the words quoted have been inserted by Act XX. of 1890, s. 20.

the Settlement Officer under section 29, the Settlement Officer shall report the case through the Commissioner of the Division to the "Board," *

and the "Board"* may direct that the person so refusing or failing be excluded from the settlement for such term, not exceeding fifteen years from the date of such direction, as the "Board"* thinks fit,

and the Settlement Officer or the Deputy Commissioner may, with the previous sanction of the "Board"* either farm the mahál, or hold it under direct management during such term or any part thereof.

Allowance to person excluded.

In such case the person so excluded shall be entitled (subject to the orders of the "Board"*) to an allowance out of the profits of the mahál, of not less than five or more than fifteen per cent. on the amount proposed to be assessed thereon.

Procedure in case of some of several proprietors refusing assessment.

36. If, in a mahál held on a pattídárí or imperfect pattídárí tenure, any of the co-sharers refuse or fail within thirty days from the date of the declaration by the Settlement Officer under section 29 to accept the proposed assessment, the shares of such co-sharers shall be dealt with under the provisions of section 35, and they shall receive an allowance, as provided in that section, in proportion to their respective shares in the mahál.

Farm of shares of proprietors refusing.

If the Settlement Officer farms any share in such mahál, the farm of such share shall be offered in the first instance to those co-sharers who have accepted the proposed terms.

Adjustment of rent of the sír land of proprietors of mahál farmed under section 35 or 36.

37. Any proprietor excluded from settlement under sections 35 and 36 shall be entitled to hold as a tenant with a right of occupancy so much of the land in the mahál actually cultivated by him as the Settlement Officer may determine, and the rent to be paid by such proprietor for such land during such exclusion shall be fixed by the Settlement Officer at the rate which would have been paid by a tenant-at-will for the said land less four annas in the rupee.

Amount of allowance to excluded proprietor, and of difference between rent fixed and rent payable by him if he were tenant-at-will.

38. The aggregate amount of any allowance assigned under section 35 or section 36 to any proprietor of a mahal who has been excluded from settlement, and of the difference between the rent fixed under section 37 and the rent which he would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount proposed by the Settlement Officer to be assessed on such mahál.

Offer of settlement to excluded proprietor on expiry of term of exclusion.

39. On the expiration of the term fixed under section 32 or section 35, the settlement of such mahál, portion, or share comprised therein, shall be offered by the Deputy Commissioner to the person then entitled to be settled with in respect of such mahál, portion, or share, at such assessment for

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* In s. 35, the word "Board" has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 15.

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the remainder of the term of settlement of the district, "as the Board or, in the case of a taluqdár, the Chief Commissioner may direct."*

Procedure on refusal.

And if such person refuse to accept the offer, the Deputy Commissioner shall report such refusal through the Commissioner of the Division "to the Board"† and such person may be excluded from settlement for such period, not exceeding the term of the settlement of the district, "as the Board or, in the case of a taluqdár, the Chief Commissioner may direct,"* and the provisions of sections 32 to 38 (both inclusive) shall, so far as may be applicable, apply to his case.

Determination of rent payable to proprietor.

40. The Settlement Officer shall, in accordance with the provisions of the Oudh Sub-settlement Act, 1866,‡ so far as they are applicable, determine the rent to be paid to the proprietor by all under-proprietors in a mahál, and by all holders of heritable, non-transferable leases, whose rent has not been fixed by contract.

When the rent is so determined, the co-sharers may at their option agree with the Settlement Officer that the rent shall be paid either by them collectively or by one of them on behalf of himself and the others. Whenever, whether before or after the passing of this Act, rent payable by such under-proprietors or lessees has been determined by a Settlement Officer or other competent authority, all the co-sharers shall be jointly and severally responsible for the payment to the proprietor of the rent so determined.

Nothing in this section applies to rent payable by a tenant with a right of occupancy.

Saving of liability for Government revenue.

41. All land shall be deemed liable to be charged with the payment of revenue to Government, unless some competent authority has declared it exempt from such payment. And no length of occupancy of any land, nor any grant of land made by the proprietor, shall release such land from such liability.

Enquiry into cases of land released from payment of revenue.

42. The Settlement Officer shall enquire into the case of all lands released, conditionally or for a term, from the payment of revenue, and shall assess such lands if it appear to him that the conditions have been transgressed, or the term has expired.

Confirmation of settlement.

43 § Every settlement shall be made subject to confirmation by the Chief Commissioner:

Provided that, in the case of settlements of individual mahals or parts of mahals, undertaken at other times than at the general settlement, and sanctioned by the Board, such confirmation shall not be necessary.

Period for which settlement is to be made.

44. The "Chief Commissioner"‖ shall, at some time before confirming the settlement, fix the period for which the settlement is to be made. Such period shall be fixed with reference to the agricultural year.

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* In s. 39 the words quoted have been substituted for the words "as the Chief Commissioner may direct," by Act XX. of 1890, s. 20.

† In s. 39 the words quoted have been substituted for the words "to the Chief Commissioner," by Act XX. of 1890, s. 20.

‡ See Vol. I., p. 643.

§ S. 43 has been substituted by Act XX. of 1890, s. 21 (*1*).

‖ In s. 44 the words quoted have been substituted for the words "Governor-General in Council," by Act XX. of 1890, s. 22.

45. The assessment of any mahál may be revised at any time before it is confirmed by the "Chief Commissioner,"* and in such case the revised assessment shall be proposed to the proprietors of such mahál, and the provisions of sections 23 to 40 (both inclusive) shall apply.

Revision of assessment before confirmation.

Alteration of Assessment during the Currency of a Settlement.

46. The Deputy Commissioner shall enquire annually into the cases of all land released from the payment of revenue conditionally, or for a term, or for the life of the grantee.

Annual enquiry as to revenue-free grants.

If the condition be broken, he shall report the case through the Commissioner of the Division to the "Board "† for orders,

and if the term has expired, or (where the grant is for the life of the grantee) if the grantee has died, the Deputy Commissioner shall assess the land comprised therein, and shall report his proceedings through the Commissioner of the Division to the "Board "† for sanction.

47. All land added by alluvion to a mahál is liable to assessment. Such land may be assessed and settled under rules to be framed under section 220.

Assessment of land added by alluvion.

48. Where such land is held by an under-proprietor or lessee whose rent has been fixed by a Settlement Officer, such rent shall be increased proportionately to the increase of revenue effected by such assessment.

Proportionate increase of rent payable by under-proprietor.

49. Where the revenue assessed on a mahál has, by order of the Chief Commissioner, been reduced, or been wholly or in part remitted or suspended, and the land on account of which the revenue has been so reduced, remitted, or suspended, is in the possession of an under-proprietor or lessee whose rent has been fixed by a Settlement Officer or other competent authority, the Chief Commissioner may declare that such under-proprietor or lessee shall be entitled (where the revenue has been reduced or remitted) to a proportionate reduction or remission of the rent payable by him in respect of such land, or (where the revenue has been suspended) to a suspension of the payment of such rent for the time during which the revenue has been so suspended, and such under-proprietor or lessee shall thereupon be entitled accordingly.

Proportionate reduction or remission of rent payable by under-proprietor or lessee.

50. Assessments under sections 46 and 47 shall be made by the Deputy Commissioner in the same manner and with the same powers as if he were an officer in charge of a settlement.

Deputy Commissioner to have powers of officer in charge of settlement.

51. At any time during the currency of a settlement, the Chief Commissioner may‡ invest any officer with all or any of the powers of an officer in charge of a settlement under this Act, within such limits, and with such restrictions, and for such period, as he thinks fit;

Power to invest officer with Settlement Officer's powers.

* In s. 45 the words quoted have been substituted for the words "Governor-General in Council," by Act XX. of 1890, s. 22.

† In s. 46 the word "Board" has been substituted for the words "Chief Commissioner," by Act XX of 1890, s. 15.

‡ In s. 51, the words, "with the previous sanction of the Governor-General in Council," repealed by Act XIV. of 1878, s. 4, have here been omitted.

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but not so as to enable him to enhance the total amount of revenue payable on account of any mahál, except in respect of land added thereto or becoming liable to payment of revenue since the confirmation of the settlement.

Resumption of Rent-free Grants.

52. All grants (whether in writing or otherwise) by proprietors, or the persons whom they represent, of land to be held exempt from the payment of rent or at a favourable rate of rent, are hereby declared to be liable to resumption, unless such grants have been sanctioned or confirmed by the Governor-General in Council or the Chief Commissioner:

Liability of rent-free grants to resumption.

Provided that, if such grants are held under a written instrument (whether executed before or after the passing of this Act) by which the grantor expressly agrees that the grant shall not be resumed, they shall be held valid against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate which was current at the date of the grant.

Grants under certain instruments.

53. Proprietors wishing to resume any grants mentioned in section 52, and made by themselves or the persons whom they represent, shall apply by petition to the principal Court of original civil jurisdiction of the district in which the land is situate for a declaration of the liability of the grant to resumption.

Application for declaration of such liability.

The Court shall cause notice of such application to be served on the grantee, and shall fix a day for hearing his objections (if any) to the declaration; and thereupon, after considering such objections (if any), may either dismiss the application with or without costs to be paid by the applicant, or declare that the grant is liable, in whole or in part, to resumption.

54. If the Court find that the grant has been made in consideration of the loss or surrender of a right previously vested in the grantee, but has not been sanctioned or confirmed as mentioned in section 52, the Court shall refer the case to the Chief Commissioner, who shall make such order in the case as he thinks fit.

Procedure where grant made in lieu of right, but not sanctioned or confirmed.

55. Nothing in section 52 or section 53 applies to either of the following cases:—

Exemptions from sections 52 and 53.

(*a*) where land is held rent-free under a judicial decision;

(*b*) where, previously to the passing of this Act, land held rent-free has been acquired for a valuable consideration, and the right to resume it has been barred by the law of limitation.

CHAPTER IV.—Registration, including the Preparation and Maintenance of Revenue-records.

56. The Deputy Commissioner of the district shall, on the basis of the settlement-record, and, in accordance with such rules as the "Board, with the previous sanction of the Chief Commissioner,"* from time to time, prescribes in this behalf, prepare the following lists and registers:—

Lists and registers to be prepared by Deputy Commissioner.

* In s. 56, the words quoted have been substituted for the words "Chief Commissioner" by Act XX. of 1890, s. 23.

The pargana-register. (*a*) a list of all the villages in each pargana or tahsil of his district;

(*b*) a list of all the revenue-paying maháls in each pargana or tahsil, showing the revenue assessed on each mahál, and the name of the person responsible for its payment, whether as sole proprietor or as lambardár;

The málguzári register.

The khewat. (*c*) a register of all the co-sharers in each mahál, with the nature and extent of the interest of each co-sharer;

Register of sub-settled maháls with khewat. (*d*) a register of all maháls in which the rent of any under-proprietor or lessee has been fixed by the Settlement Officer, the names of all the co-sharers in such maháls, together with the nature and extent of the interest of such co-sharers;

Register of under-proprietary and other tenures. (*e*) for each mahál a list—

(1) of all under-proprietors and lessees whose rent has been so fixed, and of all tenants with a right of occupancy, with the nature and extent of the interest of each such person, and the rent (if any) which he is liable to pay therefor,

(2) of all other persons (if any) holding land free of rent, or revenue-free;

Register of revenue-free tenures. (*f*) a register—

(1) of all land in his district held revenue-free, with the names of the holders and the conditions of the grant under which they hold,

(2) of all land declared by competent authority to be waqf or nazul, or the property of the State;

The málikána register. (*g*) a register of all maháls on which a málikána allowance has been sanctioned by competent authority, with the names of the persons entitled to such allowance, the amount of such allowance, and the conditions under which it was given;

Register of jungle-grants. (*h*) a register of all jungle-grants, the names of the grantees, and the conditions of the grants.

57. In the preparation of the said lists and registers, the Deputy Commissioner shall correct any errors in the settlement-record which the parties interested admit to have been made therein; and any dispute arising regarding any entry in such record shall be investigated and decided on the basis of actual possession; and all persons not in possession, but claiming the right to be so, shall be referred to a Court of competent jurisdiction: Provided that, if the claim is founded on a decree of such Court, and if, when the claim is made, the decree is capable of execution, the entry shall be made in accordance with such decree.

Correction of errors in settlement-record.

Deputy Commissioner to keep lists and registers. **58.** The Deputy Commissioner shall keep and maintain the said lists and registers,

and he shall from time to time cause to be registered all events and transactions affecting any of the rights or interests recorded in the said registers, to

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such extent as the "Board, with the previous sanction of the Chief Commissioner,"* may from time to time prescribe.

Forms of lists and registers.

59. The "Board, with the previous sanction of the Chief Commissioner,"* shall prescribe the forms in which the lists and registers mentioned in section 56 are to be prepared,

and the manner in which, the persons by whom, and the occasions on which, the alterations referred to in section 57 and section 58 are to be prepared.

Power to prescribe fees for mutations.

60. The Chief Commissioner may prescribe proper fees for alteration in the lists and registers formed under the said rules: Provided that no fee for a single alteration shall exceed one hundred rupees.

Levy of fees.
Fees how spent.

Such fee shall be levied from the person in whose favour the mutation is made, and shall be expended in such manner as the Chief Commissioner thinks fit.

Notice of transfer of possession.

61. All persons obtaining the possession of land or the profits thereof, whether by succession, purchase, or other form of transfer, as proprietors or under-proprietors, or as lessees whose rents have been fixed by a Settlement Officer, or as mortgagees, shall give notice of the same immediately after it has taken place to the tahsildár of the tahsil in which the mahál to which such land belongs is situated, or to the Deputy Commissioner of the district.

If the notification be made to the tahsildár, that officer shall report such notice to the Deputy Commissioner.

Enquiry as to truth of transfer.

62. The Deputy Commissioner, on receiving such notice or report, shall make such enquiry as the "Board, with the previous sanction of the Chief Commissioner,"* may from time to time prescribe, to ascertain the fact of the alleged transfer of the property, and if the transfer appears to have taken place, he shall, subject to the rules framed by the "Board, with the previous sanction of the Chief Commissioner,"* under section 220, record the same in the appropriate register:

Provided that no such entry shall be held to affect the rights of any other person who may claim and establish in any Court of competent jurisdiction any interest in the land to which the entry has reference.

Notification in case of minority or other disqualification.

63. If the person so succeeding is a minor or otherwise under disability, the guardian or other person who has charge of his property shall give the notice required by section 61.

Fine for neglect to notify.

64. Any person neglecting to give the notice prescribed in section 61 within three months from the date of the occurrence of the fact to be notified, shall be liable, at the discretion of the Deputy Commissioner, to a fine not exceeding five times the amount of the fee which would otherwise have been payable under section 60.

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* In ss. 58, 59, and 62, the words quoted have been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 23.

65. If, in the course of enquiry made under section 62, a dispute regarding the possession of the property arises, and the Deputy Commissioner is unable to satisfy himself as to which party is in possession, he shall entertain by summary enquiry who is the person *primâ facie* entitled to the property, and shall put such person in possession, and make the necessary entry in the record accordingly, subject to any order that may be subsequently passed by the Civil Court.

Power to put one party in possession in certain cases of dispute.

66. When any person obtains possession of land, or of the profits thereof, for any interest other than those referred to in section 61, the transfer of such possession shall be recorded in such manner as the "Board, with the previous sanction of the Chief Commissioner,"* from time to time directs;

Registry of transfers of interests in land other than those referred to in section 61.

and all disputed cases shall be reported to the Deputy Commissioner, who shall make such enquiry as may be necessary to ascertain the fact of the alleged transfer, and cause the record to be amended accordingly.

Enquiry in disputed cases.

67. All registers prepared under the preceding sections of this chapter shall be deemed to be public documents and the property of Government, and shall be open to public inspection at such hours, and on such conditions as to fees or otherwise, as the "Board, with the previous sanction of the Chief Commissioner,"* may from time to time prescribe.

Inspection of registers.

CHAPTER V.—Partition and Union of Mahals.

Partitions.

68. Partition is either perfect or imperfect.

'Perfect partition' means the division of a mahál into two or more mahals, severally responsible for the revenue assessed on each.

'Perfect partition.'

'Imperfect partition' means the division of any mahál, or of any portion of a mahál, into two or more portions jointly responsible for the revenue assessed on the whole mahál.

'Imperfect partition.'

69. Any recorded co-sharer in a mahál and any person in whose favour a decree has been passed by any Civil Court, awarding to him the proprietary right in a portion of a mahál, whether such portion consists of a fractional share in the whole or a part of the mahál, or of specific lands, is entitled to claim perfect partition of his share.

Persons entitled to perfect partition.

Any two or more recorded co-sharers may claim that their shares be divided from the other shares by a perfect partition, and be held by them as a single mahál.

If any recorded co-sharer be under disability, the person in possession of his property shall, for the purpose of this section, be deemed to be a recorded co-sharer.

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* In ss. 66 and 67 the words quoted have been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 23.

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Application for perfect partition.

70. Applications for perfect partition are to be made in writing to the Deputy Commissioner of the district in which the mahál is situated;

and shall be accompanied by a certified copy of the record, showing the share held by the applicant in the mahál:

Provided that, if the mahál be situated in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Deputy Commissioners of those districts as the "Board"* may direct.

Provision as to estates situated in more than one district.

Notification of application.

71. The Deputy Commissioner, on receiving an application for partition, shall, if the application be in order, and not open to objection on the face of it, publish a notification of the same at his office, and at some conspicuous place in the mahál to which the application relates,

and shall serve a notice on all such of the recorded co-sharers in the mahál as have not joined in the application, requiring any co-sharer in possession who may object to the partition to appear before him to state his objection, either in person or by a duly authorized agent, on a day to be specified in the notice, not less than thirty, or more than sixty, days from the date on which such notice was issued.

Notice to co-sharers not joining.

Notification when alone sufficient.

72. Where, from any cause, notice cannot be personally served on any co-sharer, the notification so published shall be deemed sufficient notice.

Power to refuse partition when objection admitted.

73. If, on or before the day so specified, any objection is made to the partition by any co-sharer in possession, and the Deputy Commissioner, on a consideration of such objection, is of opinion that there is any good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Procedure if question of title be raised.

74. If the objection raises any question of title, or of proprietary right, which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner may either decline to grant the application until the question in dispute has been determined by a competent Court, or he may proceed to enquire into the merits of the objection.

In the latter case the Deputy Commissioner, after making the necessary inquiry, and taking such evidence as may be adduced, shall record a proceeding declaring the nature and extent of the interests of the party or parties applying for the partition, and any other party or parties who may be affected thereby.

Procedure in such cases.

The procedure to be observed by the Deputy Commissioner in trying such cases shall be that laid down in the Code of Civil Procedure† for the trial of original suits, and he

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* In s. 70, the word "Board" has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 15.

† This reference should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

may, with the consent of the parties, refer any question arising in such case to arbitration, and the provisions of Chapter XXXVII.* (relative to arbitrators) of the same Code shall apply to such references.

Reference to arbitration.

75. All orders and decisions passed by the Deputy Commissioner under the last preceding section, for declaring the rights of parties, shall be held to be decisions of a Court of civil judicature of first instance, and shall be open to appeal under the provisions of the Oudh Civil Courts Act.†

Deputy Commissioner's decision equivalent to decision of Civil Court.

Appeal thereupon.

Upon such appeal being made, the Appellate Court may issue a precept to the Deputy Commissioner, desiring him to stay the partition pending the decision of the appeal.

Appellate Court may stay partition.

76. When it has been decided to make a partition under this chapter, the Deputy Commissioner shall either give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he shall make the partition himself, or cause it to be made by any Assistant Commissioner subordinate to him, and when made by an Assistant Commissioner, it shall be reported to the Deputy Commissioner for his confirmation.

Option to make partition themselves, or to appoint arbitrators.

Partition by arbitrators.

77. If arbitrators are appointed, the provisions of sections 191 to 202, both inclusive, shall apply.

In making a partition, arbitrators shall not be bound by the provisions of sections 80 to 83, both inclusive; but they shall deliver a full and complete paper of partition, specifying the separate mahâls into which they propose that the mahâl shall be divided; the names of the parties to whom the several mahâls are proposed to be allotted, and the amount of land-revenue which, in the opinion of the arbitrators, should be assessed on each of such mahâls.

78. In making partitions, the Deputy Commissioner, and any person appointed by him, shall have the same powers to enter on the land under partition, for marking out the boundaries, surveying the mahâl, and other purposes, as are conferred on Settlement Officers under this Act.

Power to enter on land for purposes of partition.

79. When a Deputy Commissioner has decided that a partition shall be made, he may, with the sanction of the Commissioner, hold the mahâl under direct management pending the completion of the partition.

Power to hold mahâl under direct management pending partition.

The provisions of the law in force for the time being for the management of mahâls held under direct management under section 119 for arrears of revenue shall be applicable to mahâls the management of which is assumed under this section.

The collections of the mahâl shall be applied to the payment of the Government revenue, and, after defraying the expenses of management and any

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* The reference to Ch. VI. of Act VIII. of 1859 has been altered in accordance with Act XIV. of 1882, s. 3.

† See now the new Oudh Civil Courts Act (XIII. of 1879), *infra*.

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other expenses with which the mahál is chargeable, the residue shall be divided amongst the recorded co-sharers, in proportion to their respective shares, at such periods as the Deputy Commissioner may see fit.

Partition of lands held only in severalty.

80. Where there are no lands held in common, the lands held in severalty by the applicant for partition shall be declared a separate mahál, and shall be separately assessed to the Government revenue.

Partition of lands some of which are held in common.

81. Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of such lands in accordance with village-custom, if any such exist.

If no such custom exist, the Deputy Commissioner shall make such division as may secure to the applicant his fair portion of the common lands.

Formation of separate mahálś from shares allotted in partition.

82. The portion of the common lands falling by such partition to the share of the applicant shall be added to the land held by him in severalty, and the mahálś thus formed shall be assessed and declared separate mahálś.

Transfers to be effectuated in making partition.

83. In making partitions under this Act, the Deputy Commissioner shall give effect to any transfer of lands held in severalty and forming part of the mahál, which has been agreed to by the parties previous to the declaration of the partition.

Partition where all lands held in common.

84. Where all the lands are held in common, the Deputy Commissioner shall make such a partition as may secure to the applicant his fair share of the mahál.

Estate to be compact.

85. In all cases each mahál shall be made as compact as possible: Provided that, except with the sanction of the "Board,"* no partition be disallowed solely on the ground of incompactness.

Rule when dwelling-house of one sharer is included in mahál assigned to another.

86. If in making the partition it be necessary to include, in the mahál assigned to one sharer, the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with the buildings thereon (if any) on condition of his paying a reasonable ground-rent therefor to the sharer into whose portion it may fall.

The limits of such land, and the rent to be paid for it, shall be fixed by the Deputy Commissioner.

Rule as to tanks, wells, water-courses, and embankments.

87. Tanks, wells, water-courses, and embankments, shall be considered as attached to the land for the benefit of which they were originally made.

Where, from the extent, situation, or construction of such works, it is found necessary that they should continue the joint property of the proprietors of two or more of the mahálś into which the mahál may be divided, the Deputy Commissioner shall determine the extent to which the proprietors of each mahál may make use of the said works, and the proportion of the charges

* In s. 85 the word "Board" has been substituted for the words "Chief Commissioner," by Act XX. of 1890, s. 15.

for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works, shall be divided.

Rules as to places of worship and burial-grounds.

88. Places of worship and burial-grounds, held in common previous to the partition of a mahál, shall continue to be so held, unless the persons who so held them otherwise agree among themselves.

In such cases they shall state in writing the agreement into which they have entered, and such writing shall be filed with the record.

Determination of revenue payable by each division of a mahál.

89. In all cases, whether partition has been made by arbitrators or otherwise, the amount of revenue to be paid in respect of each portion of a mahál partitioned under this chapter shall be determined by the Deputy Commissioner, provided that the aggregate revenue payable in respect of the new mahals shall not exceed the revenue assessed on the mahál immediately before partition;

Liability of proprietors.

and the proprietor of each new mahál shall be held liable for the portion of the revenue assessed on his mahál, whether a new engagement be taken from him or not.

Power to stay partition.

90. If, at any stage of any proceedings under this chapter, there appears to be any reason for stopping the partition, the Deputy Commissioner may of his own motion, or on the report of the Assistant Commissioner making the partition, stay the partition, and order the proceedings to be quashed.

Order confirming partition.

91. A partition, whether made by the Deputy Commissioner himself or otherwise, shall not be deemed to be complete unless the Deputy Commissioner has made an order confirming it.

Notification of order.

On making such order, he shall publish a notification of the fact at his office, and at some conspicuous place in each of the new mahals,

Partition when to take effect.

and the partition shall take effect on and from the first day of July next after the date of such notification.

Appeal to Commissioner from orders of Deputy Commissioner.

92. An appeal against the decision of the Deputy Commissioner confirming a partition shall lie to the Commissioner of the Division within one year from the date on which such partition takes effect.

Power to order new allotment of revenue on proof of fraud or error in first distribution.

93. Where the land-revenue is fraudulently or erroneously distributed at the time of the partition, the Chief Commissioner may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the land-revenue upon the several mahals into which the mahál has been divided, on an estimate of the assets of each mahál at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Making of imperfect partitions.

94. Imperfect partition shall be carried out according to the provisions of sections 69 to 92 (both inclusive) so far as they are applicable; Provided that no application for

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imperfect partition shall be entertained unless the consent of recorded co-sharers, holding in the aggregate more than one moiety of the property of which partition is sought, be first obtained.

Civil Courts barred from entertaining applications for partitions.

95. No Civil Court shall entertain any suit or application for perfect or imperfect partition.

Previous imperfect partitions and partitions of under-proprietary mahâls.

96. All imperfect partitions, and all partitions, perfect or imperfect, of under-proprietary mahâls, hitherto made, shall be deemed to have been made under the provisions of this Act.

Union of mahâls originally part of same village.

97. If two or more revenue-paying mahâls have originally formed portions of the same village, the proprietor shall be entitled to have such mahâls united, and to hold them as a single mahâl.

Application for such union.

98. Every application for the union of such mahâls shall be made in writing to the Deputy Commissioner of the district in which the mahâls are situate.

Application how dealt with.

If the Deputy Commissioner see no objection, he shall comply with the application, and cause the necessary entries to be made in the register of his office, reporting the case to the Commissioner of the Division.

Partition or union of revenue-free mahâls.

99. The provisions of this chapter, so far as they are applicable, may be applied by order of the Deputy Commissioner to the partition or union of mahâls held free of revenue.

Partition of taluqdârî and under-proprietary mahâls.

100. The partition of taluqdârî and under-proprietary mahâls, and of mahâls held by lessees whose rent has been fixed by the Settlement Officer or other competent authority, shall be carried out according to the provisions of sections 69 to 93 (both inclusive), so far as they are applicable.

Assignment of inferior mahâls.

(*a*) In the partition of taluqdârî mahâls, all mahâls, whether under-proprietary or held by lessees whose rent has been fixed by the Settlement Officer or other competent authority, shall, if practicable, be assigned to one or other of the new taluqâs to be formed by the partition ;

(*b*) if any such mahâl cannot be assigned in whole, the assignment shall be made by thoks, pattîs, or other existent sub-divisions ;

(*c*) and if no other satisfactory arrangement can be made, such mahâl shall be partitioned ;

(*d*) in cases in which one portion of any such mahâl is assigned to one taluqâ and another portion to another taluqâ, each portion shall be deemed a separate mahâl, the joint responsibility of the co-sharers being limited to such portion.

Objection to distribution of rental.

101. Whenever a partition of a mahâl, whether under-proprietary or held by lessees whose rent has been fixed as aforesaid, is effected under this Act, the amount of rent to be paid in respect of each portion shall be determined by the Deputy Commissioner, and the person to whom such rent is payable may present an application in writing to the Deputy Commissioner objecting to the distribution

of the rental over the several parts into which the mahál has been divided, and praying that such objection may be heard and determined; and his objection shall be heard and determined, and the Deputy Commissioner shall record his reasons for such determination.

CHAPTER VI.—MAINTENANCE OF BOUNDARIES.

102. The Deputy Commissioner and his subordinates shall have power to enter upon and survey land, and to demarcate the boundaries of maháls, villages, and fields.

Power of Deputy Commissioner to enter and survey.

103. All owners of maháls, villages, or fields, are bound to maintain and keep in repair, at their own cost, the boundary-marks lawfully erected thereon.

Obligations of owners as to boundary-marks.

104. Any person convicted before a Deputy Commissioner of wilfully erasing, removing, or damaging any such boundary-mark, may be ordered by the convicting officer to pay such sum, not exceeding fifty rupees for each mark so erased, removed, or damaged, as may be necessary to defray the expense of restoring such mark, and of rewarding the informer (if any) through whom the conviction was obtained.

Payment for erasing, removing, or injuring marks.

105. Whenever the person erasing, removing, or damaging any such mark cannot be discovered, or if, for any other reason, the sum which he has been so ordered to pay cannot be recovered, the mark shall be re-erected or repaired at the charge of the owner or owners of such one or more of the conterminous fields* or maháls as to the Deputy Commissioner seems fit.

Who is to be charged for re-erection and repair when offenders not discoverable.

106. The Deputy Commissioner may decide, on the basis of possession, all disputes concerning boundaries, and may at any time direct the owners of maháls, villages, or fields, by written notice served upon them—

Powers of Deputy Commissioner as to boundary-disputes and boundary-marks.

(*a*) to cause proper boundary-marks to be erected in such maháls, villages, or fields,

(*b*) to repair the boundary-marks lawfully erected in such maháls, villages, or fields.

107. In default of compliance with such direction within fifteen days from the date of the service of the notice, the Deputy Commissioner shall cause such boundary-marks to be erected or repaired, as the case may be, and shall charge the cost of such erections or repairs to the owners of the conterminous maháls, villages, or fields in such proportion as he thinks fit.

Power to erect or repair boundary-marks.

CHAPTER VII.—COLLECTION OF THE LAND-REVENUE.

108. In the case of every mahál the entire mahál shall be charged with, and all the proprietors jointly and severally shall be responsible to Government for, the revenue for the time being assessed on the mahál.

Responsibility of proprietors of mahál for land-revenue.

* In s. 105 the word "fields" has been substituted for the word "field" by Act XII. of 1891, Sch. II.

Act XVII. of 1876.

The term "proprietors" shall, for the purposes of this chapter, include all persons in possession for their own benefit.

Chief Commissioner may make rules as to payment of revenue.

109. The "Board, with the previous sanction of the Chief Commissioner,"* may, from time to time, make rules as to the instalments in which, and the persons, places, and times to whom and at which, the revenue payable in respect of any land shall be paid.

Payment until issue of rules.

110. Until the issue of such rules the said revenue shall be paid in the instalments, to the persons, and at the times and places in which, to whom, and at which, it is now paid.

Effect of non-payment.

111. Any sum not so paid becomes thereupon an arrear of revenue, and the proprietor responsible for it becomes a defaulter.

No interest shall be demanded on any arrear of land-revenue.

Defaulters in case of settlements with lambardárs.

112. If the settlement of any land has been made with a lambardár, and if there be an arrear of revenue due in respect of such land, both the lambardár and the co-sharers of the mahál from which the arrear is due shall be deemed defaulters.

Evidence of arrear.

113. A statement of account certified by the tahsildár shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear, of its amount, and of the person who is the defaulter.

Writ of demand.

114. When an arrear of land-revenue has accrued, a writ of demand or summons to appear may issue, calling on the defaulter to pay the amount within a time therein stated.

Arrest and detention of defaulter.

115. At any time after an arrear of land-revenue becomes due, "such officer as the Board from time to time empowers in this behalf, either by name or by virtue of his office,"† may arrest the defaulter, and detain him in custody for fifteen days, unless the arrear, together with the costs of arrest, is sooner paid.

Imprisonment in civil jail.

116. If the arrear be not paid within fifteen days, and no good reason for the non-payment is shown, the Deputy Commissioner may issue an order to the jailor of the civil jail of the district, directing him to confine the defaulter therein as a civil prisoner until the arrear is paid, or until the expiration of such period, not exceeding six months from the date of the order, as the Deputy Commissioner thinks fit; and such person shall be confined according to the terms of such order:

Provided that no person exempted under the law‡ for the time being in force from personal attendance in the Civil Courts, no taluqdár, and no

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* In s. 109, the words quoted have been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 23.

† In s. 115, the words quoted have been substituted for the words, "such officer as the Chief Commissioner from time to time empowers in this behalf," by Act XX. of 1890, s. 24.

‡ See Act XIV. of 1882, s. 641.

female, shall be subject to arrest or imprisonment under this and the preceding section. Act XVII. of 1876.

117. The Deputy Commissioner may, whether the defaulter has been arrested and imprisoned or not, order the attachment and sale of so much of his moveable property as will, as nearly as may be, defray the arrear.

Attachment and sale of moveables.

Nothing herein contained shall authorize the attachment and sale of articles set aside exclusively for the use of religious endowments; or, in the case of an agriculturist, of instruments of husbandry and of cattle *bonâ fide* kept for the cultivation of his land; or, in the case of an artisan, of his tools; nor of any other articles exempted, by the law* for the time being in force, from sale in execution of decrees of Civil Courts.

118. Every attachment and sale ordered under the preceding section shall be conducted according to the law† in force for the time being for the attachment and sale of moveable property under the decree of a Civil Court.

Conduct of sale.

119. When an arrear of land-revenue has become due in respect of a share, pattí, or mahál, the Deputy Commissioner may, in addition to, or instead of, the processes hereinbefore specified, cause such share, pattí, or mahál to be attached and taken under the direct management of any agent whom he appoints for that purpose.

Property may be attached and taken under direct management.

For the purpose of managing the property so attached, the agents so appointed shall have all the rights, and be subject to all the liabilities, with respect to such property, of the person for whose default it was attached,

Powers and obligations of agent.

until the arrears of land-revenue due therefrom have been satisfied, or until the Deputy Commissioner directs him to restore the person whose interest has been attached to the management thereof.

120. All surplus profits of the property so attached, after defraying thereout any instalment of land-revenue that may become due during such management, and the cost of such attachment and direct management, shall be applied to discharging the arrear of revenue on account of which it was ordered.

Application of surplus profits.

And no such management shall continue after such arrear has been discharged as aforesaid, and any surplus remaining after payment of the charges mentioned in the first clause of this section shall be handed over to the proprietor.

Termination of management.

121. If an arrear of land-revenue has become due in respect of the share of any member of a village-community, such community, or any member thereof, may tender payment of such arrear, or may offer to pay such arrear by instalments.

Transfer of share of defaulter to solvent co-sharers.

If such tender be made, or if the Deputy Commissioner considers such offer satisfactory, the Deputy Commissioner may transfer the share of the defaulting member to the community or member making the tender or offer, on such terms as the Deputy Commissioner thinks fit, and either for a term of years, or until such arrear is paid.

* See Act XIV. of 1882, s. 266.

† See Act XIV. of 1882, Ch. XIX.

Act XVII. of 1876.

In case of conflicting tenders or offers under this section, the co-sharer, who, in case the share were sold, would have a right of pre-emption under section 9 of the Oudh Laws Act,* shall be preferred.

When transfer of share is to become absolute.

122. If such share is so transferred until the arrear is repaid, and if the arrear is not repaid within twelve years from the date of the transfer, the community or member to whom the share has been so transferred may apply in writing to the Deputy Commissioner to publish a notification that, if the arrear is not paid within one year from the date thereof, such transfer will become absolute.

The Deputy Commissioner shall publish such notification accordingly, and if the arrear is not repaid before the expiration of one year from the date of the notification, the transfer to such community or member shall become absolute.

Procedure not to affect joint liability of co-sharers.

123. The procedure prescribed in the two preceding sections shall not affect the joint liability of the co-sharers of the mahál.

When settlement may be annulled.

124. When any arrear of land-revenue has become due in respect of any pattí or mahál, and the Deputy Commissioner is of opinion that the processes hereinbefore provided are not sufficient for the recovery of such arrear, he may, in addition to, or instead of, any such process, report, through the Commissioner of the Division, the matter to the "Board, and the Board, or, in the case of a taluq or part of a taluq,† the Chief Commissioner," may thereupon order the existing settlement of such pattí or mahál to be annulled.

Exception of certain arrears.

The provisions of this section shall not be put in force for the recovery of any arrear of land-revenue which may have accrued on land—

(*a*) while attached under section 119, or

(*b*) while in charge of the Court of Wards.

When settlement annulled, Deputy Commissioner may manage land himself, or by agent, or let it in farm.

125. When the settlement of any pattí or mahál has been annulled under the last preceding section, the Deputy Commissioner may, with the previous sanction of "the Board or, in the case of a taluq or part of a taluq, the Chief Commissioner,"‡ either manage the land by himself or an agent, or let it in farm to any person willing to accept the same, for such term and on such conditions as may be approved by "the Board or, in the case of a taluq or part of a taluq, the Chief Commissioner:"‡

Provided that the term for which a pattí or mahál may be so managed or let be not longer than fifteen years from the first day of July next after the date of such annulment.

Suspension of contracts.

And no interest in or right to such pattí or mahál or any part thereof, created or assigned by any person who, immediately before the annulment of the settlement, was in possession of the whole or any part of the land comprised therein, or by any person through whom he claims, shall, during the continuance of such term, be binding on the Deputy Commissioner or his agent or lessee.

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* See Act XVIII. of 1876, *infra*.

† In s. 124, the words quoted have been substituted for the words, "to the Chief Commissioner, and the Chief Commissioner," by Act XX. of 1890, s. 25.

‡ In s. 125, the words quoted have been substituted for the words, "the Chief Commissioner," by Act XX. of 1890, s. 26.

126. When the Deputy Commissioner attaches any land under section 119, or when the settlement of any land has been annulled under section 124, he shall make public proclamation thereof on the mahál.

Proclamation of attachment or annulment of settlement.

And he may realize all arrears of rent becoming due in respect of such land by under-proprietors or by lessees whose rent has been fixed by a Settlement Officer, as if they were arrears of land-revenue.

127. No payment made after such proclamation on account of rent or other profit of the land so attached, or of which the settlement has been so annulled, to any person other than the Deputy Commissioner or his agent or lessee, shall be credited to the person making such payment, or relieve him from liability to payment to the Deputy Commissioner, his agent, or lessee.

Payments thereafter to defaulter not to discharge payer.

128. No payment made to the defaulter in anticipation of the usual period for the payment of rents shall, without the special sanction of the Deputy Commissioner, be credited to the person making the same in account with the Deputy Commissioner, or with his agent or lessee.

Payments to defaulter in anticipation of due date.

129. When any land has been let in farm under section 125, any balance due by the lessee as such may be recovered from him or his surety (if any) as if it were an arrear of revenue.

Recovery of balance due by farmer.

130. Whenever the settlement of any portion of a mahál is annulled under section 124, the joint responsibility of the co-sharers of the mahál for the revenue of such portion subsequently becoming due, shall be in abeyance until a new settlement of such portion is made under section 131.

Suspension of responsibility of co-sharers for revenue of portion of mahál as to which settlement is annulled.

131. After the expiration of the period for which any land has been managed or let in farm under section 125, the Deputy Commissioner shall offer to the person entitled to be settled with under section 26 a new settlement, on such conditions as "the Board or, in the case of a taluq or part of a taluq, the Chief Commissioner"* may direct, for the remainder of the term of the settlement of the district; and if such person refuse such offer, the Deputy Commissioner may (with the previous sanction of "the Board or, in the case of a taluq or part of a taluq, the Chief Commissioner"*) either manage the land by himself or an agent, or let the same in farm, under the provisions of sections 30 to 38, both inclusive.

Offer of settlement to proprietor on expiry of period for which land is managed or farmed.

132. When an arrear of land-revenue has become due in respect of any pattí or mahál, and the Deputy Commissioner of the district is of opinion that the other processes hereinbefore provided are not sufficient for the recovery of such arrear, he may, in addition to, or instead of, all or any such other processes, and subject to the provisions next hereinafter contained, and with the previous sanction of "the Board or, in the case of a taluq or part of a taluq, the Chief Commissioner,"* sell by auction the pattí or mahál in respect of which such arrear is due:

Power to sell land to recover revenue-arrears.

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* In ss. 131 and 132 the words quoted have been substituted for the words "the Chief Commissioner," by Act XX. of 1890, s. 26.

Act XVII. of 1876.

Provided that no pattí or mahál shall be sold—

(*a*) for any arrears of land-revenue which may have become due in respect thereof while it was under the management of the Court of Wards, or held under the provisions of the Oudh Taluqdárs' Relief Act,* or when the proprietor or under-proprietor thereof was, at the time the arrear accrued, a female deemed by the Chief Commissioner incompetent to manage her estate, a minor, an idiot, or a lunatic;

(*b*) for any arrears of land-revenue which may have become due while it was under attachment under section 119; or

(*c*) for any arrears of land-revenue which may have become due while it was under direct management by the Deputy Commissioner, or in farm by any other person, under section 32, 35, 125, or 131.

Land to be sold free of incumbrances.

133. Land sold under the last preceding section shall be sold free of all incumbrances,

Grants and contracts void against purchaser.

and all grants and contracts previously made by any person other than the purchaser in respect of such land shall become void as against the purchaser at the auction-sale.

Exceptions.

Nothing in the former part of this section applies to leases of lands at fair rents, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, or burying-grounds.

Power to direct sale to be made subject to incumbrances.

134. The Chief Commissioner may, notwithstanding anything contained in section 133, at any time before a sale of land for arrears of revenue has been actually made, direct it to be made subject to such of the interests in or rights to such land created by the proprietor in possession thereof, or any person through whom he claims, as the Chief Commissioner thinks fit.

Power to cancel restricted sale, and re-sell under section 133.

When the proceeds of a sale so made are not equal to the arrears due at the time of sale, the Chief Commissioner may, at any time before the Commissioner of the Division has confirmed the sale, direct it to be cancelled, and a new sale of the land to be made under section 133.

Power to proceed against defaulter's other immoveable property.

135. If the arrear cannot be recovered by any of the above processes and the defaulter is in possession of any other immoveable property, the Deputy Commissioner may proceed against such other property, as if it were the land on account of which the revenue is due under the provisions of this Act:

Provided that no interest save those of the defaulter alone shall be so proceeded against, and no incumbrances created or contracts entered into by him in good faith shall be rendered invalid by such proceeding.

Procedure in effecting sale.

136. On the receipt of the sanction of "the Board or, in the case of a taluq or part of a taluq,† the Chief Commissioner" to the sale of any land, the Deputy Commissioner of the district shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale,

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* See Vol. I, p. 863.

† In s. 136, the words quoted have been substituted for the words "the Chief Commissioner," by Act XX. of 1890, s. 26.

and (when the land to be sold is a mahál or part of a mahál paying revenue to Government) the revenue assessed upon it, together with any other particulars he may think necessary.

137. When the land is sold for arrears of revenue due in respect thereof, the proclamation shall declare that the land is to be sold free of every incumbrance except the leases mentioned in section 133, and except the interests and rights, if any, referred to in the first paragraph of section 134.

Contents of proclamation.

The particulars of such leases, interests, and rights shall be given in the proclamation.

Such proclamation shall be made at the head-quarters of the tahsil in which the land is situate, and also in the village of which it is a part.

138. A written notice of the intended sale, and of the time and place thereof, shall be affixed in the office of the Deputy Commissioner of the district, and where the Assistant Commissioner in charge of the sub-division in which the land is situate has a separate office, then also in such office, and a copy of such notice shall be served on the defaulter.

Notification of sale.

139. Every sale under this chapter shall be made either by the Deputy Commissioner of the district in person or by an Assistant Commissioner specially appointed by him in this behalf.

Sale by whom to be made.

No such sale shall take place on a Sunday or other authorized holiday or until after the expiration of at least thirty days from the date on which the said notice thereof has been affixed in the office of the Deputy Commissioner of the district, and proclamation of the sale has been made in the village in which the land is situate.

Time when sale may be made.

The Deputy Commissioner of the district may, from time to time, postpone the sale, reporting such postponement to the Commissioner of the Division.

140. If the defaulter pay the arrear of revenue, in respect of which the land is to be sold at any time before the day fixed for the sale, to the person appointed by Government under section 109 to receive payment of the revenue assessed on such land, or to the Deputy Commissioner of the district, or the Assistant Commissioner in charge of the sub-division of the district, the sale shall be stayed.

When sale may be stayed.

141. The person declared to be the purchaser shall be required to deposit immediately twenty-five per cent. on the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold.

Deposit by purchaser.
Re-sale in default of deposit.

142. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the land took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then on the first office-day after such fifteenth day;

Purchase-money when to be paid.

and in default of payment within such period, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may be subsequently sold.

Re-sale in case of default.

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143. If the proceeds of the sale which is eventually made be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules contained in the Code of Civil Procedure* for the execution of a decree for money.

Liability of purchaser for loss by re-sale.

144. No re-sale under section 142 in default of payment of the purchase-money shall be made unless and until a fresh notice has been issued in the manner prescribed for the original sale.

Notification before re-sale.

145. At any time within thirty days from the date of the sale, application in writing may be made to the Commissioner of the Division to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.

Application to set aside sale.

146. No sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake complained of.

When sale may be set aside.

147. After the expiration of the said thirty days, if no such application as is mentioned in section 145 has been made, or if such application has been made and rejected, the Commissioner of the Division shall make an order confirming the sale;

and if such application be made and allowed, the Commissioner shall make an order setting aside the sale.

Every order made under this section shall be final.

Order confirming or setting aside.

148. If no such application be made within the time allowed by section 145, all claims founded on the irregularity or mistake complained of shall, as against the Government, be barred.

Bar of claims against Government.

Nothing herein contained shall preclude the institution of a suit in a Civil Court for the purpose of setting aside a sale on the ground of fraud.

149. Whenever the sale of any land is set aside, the purchaser shall be entitled to receive back his purchase-money, with or without interest, at such rate, not exceeding six per cent. per annum, as the Commissioner of the Division thinks fit.

Refund of purchase-money when sale set aside.

150. After a sale of land in respect of which an arrear of revenue is due has been confirmed in manner aforesaid, the Deputy Commissioner of the district shall, unless the purchase has been made subject to a right of some other person to possession, put the person declared to be the purchaser into possession of the land, and shall grant him a certificate, to the effect that he has purchased the land to which the certificate refers, and such certificate shall be deemed to be a valid transfer of such land, but need not be† registered as a conveyance.

On confirmation of sale, purchaser to be put in possession.

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* This reference should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

† In s. 150, the words, "stamped or," repealed by Act XII. of 1891, Sch. I., have here been omitted.

If the land has been sold on account of an arrear of revenue due in respect thereof, the certificate shall also either state that the purchaser has purchased the land to which the certificate refers free of every incumbrance other than the leases mentioned in section 133, or shall specify the incumbrances subject to which the land has been sold.

Bar of suit against certified purchaser.

151. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Application of proceeds of sale.

152. When a sale of land has been confirmed under section 147, the proceeds of the sale shall be applied in the first place to defraying the expenses of sale and to the payment of any arrears due in respect of such land at the date of the confirmation of such sale and recoverable as an arrear of land-revenue,

and the surplus (if any) shall be paid to the person whose land has been sold;

or, if the land sold were held in shares, then to the co-sharers collectively, or according to the amount of their recorded interests, at the discretion of the Deputy Commissioner of the district.

Surplus not to be paid to creditors, nor retained by Government, except under order of Court.

153. Such surplus shall not (except under an order of a Civil Court) be payable to any creditor of the person whose land has been sold, nor shall it (except under a like order) be retained in the Government treasury.

Liability of purchaser for revenue.

154. The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land-revenue becoming due in respect of such land subsequently to the date of the confirmation of the sale.

Pre-emption by co-sharers when land sold is a pattí of a mahál.

155. Where any land sold under section 132 is a pattí of a mahál, any recorded co-sharer, not being himself in arrear with regard to the revenue due in respect of such land, may, if the lot has been knocked down to a stranger, claim to take the said land at the sum last bid:

Provided that such claim be made on the day of sale, and before the officer conducting the sale has left the office for the day, and provided that the claimant fulfil all the other conditions of the sale.

Payment under protest and suit for recovery.

156. Whenever proceedings are taken under this chapter against any person for the recovery of any arrear of revenue, he may pay the amount claimed under protest to the officer taking such proceedings,

and upon such payment the proceedings shall be stayed,

and (subject to the pecuniary limitations prescribed by law) the person against whom such proceedings were taken may sue the Government for the amount so paid in any Civil Court situate in the district where such proceedings were taken;

and in such suit, the plaintiff may, notwithstanding section 113, give evidence of the amount which he alleges to be due from him.

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157. Any proprietor or under-proprietor of a mahál or portion of a mahál, that is attached, transferred, held under direct management, farmed, or sold under the provisions of this Act, who may, at the date of the order of such attachment, transfer, direct management, farm, or sale, hold any land within such mahál or portion of a mahál in his cultivating occupancy, shall be deemed to be a tenant with a right of occupancy in respect of so much of such land as the Deputy Commissioner may determine, and the rent to be paid by him for such land shall be fixed by the Deputy Commissioner under the provisions of the Oudh Rent Act, 1886.*

Proprietor of mahál when to be deemed a tenant with right of occupancy.

158. Whenever a mahál or pattí is held in sub-settlement, or under a heritable, non-transferable lease, the rent payable under which has been fixed by the Settlement Officer or other competent authority, and the rent of such mahál or pattí falls into arrear, the proprietor, instead of suing the defaulter under the Oudh Rent Act, 1886,* may, within the period limited for such a suit, apply in writing to the Deputy Commissioner requesting him to realize such arrear.

Assistance to recover rent of mahál held in sub-settlement.

The Deputy Commissioner shall, on receipt of such application, satisfy himself as to the existence of such arrear, and shall then, subject to such rules as may from time to time be made in this behalf "by the Board"† proceed to recover such arrear as if it was an arrear of revenue.

If, in addition to or in lieu of the other remedies applicable to the recovery of arrears of revenue, the Deputy Commissioner thinks it necessary or expedient to annul the sub-settlement of any such mahál or pattí, he shall refer the case with his opinion thereon "to the Board, and the Board may thereupon annul the existing sub-settlement of such mahál or pattí for such period (not exceeding fifteen years) as it thinks fit;"‡ and the new sub-settlement to be made on the expiration of such period shall be made in accordance with the provisions of section 40 and (so far as is practicable) with those of section 131.

159. If the term for which any settlement has been made expires before a new settlement is made, all persons with whom a settlement has been made, who continue after the expiration of such term to occupy the land comprised in the expired settlement, shall, until a new settlement is made, hold the said land upon the conditions of the expired settlement.

Tenure of land under expired settlement until new settlement is made.

160. The provisions of this Act with regard to the recovery of arrears of revenue shall apply to all arrears of land-revenue and sums of money recoverable as arrears of land-revenue and due when this Act comes into force.

Provisions applied to arrears due at commencement of Act.

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* The references to Act XIX. of 1868 are altered in accordance with Act XXII. of 1886, s. 2.

† In s. 158, para. 2, the words quoted have been substituted for the words, "by the Chief Commissioner," by Act XX. of 1890, s. 27.

‡ In s. 158, para. 3, the words quoted have been substituted for the words, "to the Chief Commissioner, and the Chief Commissioner may thereupon annul the existing sub-settlement of such mahál or pattí for such period (not exceeding fifteen years) as he thinks fit," by Act XX. of 1890, s. 27.

CHAPTER VIII.—COURTS OF WARDS.

Act XVII. of 1876.

Board to be Court of Wards.

161. "The Board shall be the Court of Wards" * for the superintendence of the persons and property of all persons who may become entitled as proprietors or under-proprietors, or lessees whose rent has been fixed by a Settlement Officer, to any beneficial interest in a mahál or portion of a mahál assessed to the payment of land-revenue or held free of revenue, and who are either disqualified for the management of their own estates or are committed by a Civil Court to the care of the Deputy Commissioner:

Bar of jurisdiction in certain cases.

Provided that the Court of Wards shall not take charge of or administer any beneficial interest in an estate, in which more persons than one have a joint undivided interest, unless all such persons are so circumstanced as to be subject to the Court of Wards.

Persons when disqualified to manage their estates.

162 Persons shall be held to be disqualified to manage their own estates when they are—

(*a*) females deemed by the Chief Commissioner incompetent to manage their estates,

(*b*) minors,

(*c*) idiots,

(*d*) lunatics,

(*e*) persons who may, in the opinion of the Chief Commissioner, be otherwise rendered incapable by physical defects or infirmities from managing their estates,

(*f*) persons convicted of a non-bailable offence, and disqualified, in the opinion of the Chief Commissioner, by vice or bad character, from managing their estates,

(*g*) persons declared by the Chief Commissioner on their own application to be disqualified from managing their estates.

Report by Deputy Commissioner as to disqualified proprietors.

163.† (*1*) The Deputy Commissioner shall, from time to time, inquire whether there are in his district any persons disqualified within the meaning of section 162, and shall report to the Court of Wards the case of any person who is, in his opinion, so disqualified.

(*2*) On receipt of the report the Court of Wards shall make such order in the case as it thinks fit.

(*3*) Nothing in this section shall prevent the Chief Commissioner or the Court of Wards from putting the provisions of this chapter in force without any report from the Deputy Commissioner.

Jurisdiction of Court of Wards.

164. The Court of Wards may assume or refrain from assuming the superintendence of the person or property of any disqualified person, and may at any time release any person or property from its superintendence: Provided that such person or

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* In s. 161, the words quoted have been substituted for the words, "Deputy Commissioners shall, subject to the control of the Commissioner of the Division and of the Chief Commissioner, have the power of a Court of Wards within their respective districts," by Act XX. of 1890, s. 28.

† S. 163 has been substituted by Act XX. of 1890, s. 29.

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property has not been placed under the Court of Wards by any competent authority whose order is necessary to his or its release.

Report to Chief Commissioner when right of Court of Wards is disputed by persons other than those specially provided for.

165. If, in any case not specially provided for by this or any other law for the time being in force, the right of the Court of Wards to assume or retain the superintendence of the estate of a disqualified person is disputed by such person, the case shall be reported to the Chief Commissioner, whose orders thereon shall be final.

Extent of jurisdiction.

166. The jurisdiction of the Court of Wards shall extend to the care and education, and to the management of the property, of the persons subject thereto.

Appointment, removal, and control of guardians.

167. The Court of Wards may appoint managers of the property of disqualified proprietors, and if such proprietors be minors, idiots, or lunatics, may appoint guardians for the care of their persons, and may remove and control such managers and guardians.

Power of proprietors to appoint guardians for disqualified heirs.

168. Proprietors may appoint guardians for their heirs, if disqualified, by will executed and attested in manner required in case of taluqdárs by Act No. I. of 1869,* and in case of other proprietors by the Indian Succession Act, 1865;† but the Court of Wards shall be competent to remove such guardian for any sufficient reason.

Power of Court of Wards as to residence of minors under its jurisdiction.

169. The Court of Wards may direct where all male minors under its jurisdiction shall reside for the purpose of education or otherwise.

Powers of manager.

170. The manager appointed by the Court of Wards shall have power to collect the rents of the land entrusted to him, as well as all other money due to the disqualified proprietor, and to grant receipts therefor;

and he may, subject to the control of the Court, grant or renew such leases and farms, not being for a longer period than five years, as may be necessary for the good management of the property.

Duties of manager.

171. The manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the proprietor's interest as if the property were his own.

Power of Court of Wards as to land under its charge.

172. The Court of Wards shall have power to give such leases or farms of the whole or parts of the immoveable property under its charge, and to mortgage or sell any part of such property, and to do all such other acts as it may judge to be most for the benefit of the property, and the advantage of the disqualified proprietors.

Disabilities of persons subject to Court of Wards.

173. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon or interest in such property or any part thereof.

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* See Vol. I., p. 710.

† See Vol. I., p. 521.

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Their property exempt from being taken in execution of certain decrees.

174. No such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence.

Suits by and against disqualified proprietors in charge of Court of Wards.

175. All disqualified proprietors, whose property is in charge of the Court of Wards, shall sue and be sued by and in the name of their guardians where guardians have been appointed:

Provided that no such suit shall be maintained or defended by any guardian without the sanction of the Court of Wards.

Suits by such proprietors when no guardian appointed.

176. If no such guardian has been appointed, the disqualified proprietors shall sue and be sued by and in the name of "the Deputy Commissioner of the district, in which the suit is brought, or by and in the name of such officer as the Court of Wards may appoint in this behalf." *

Rules relating to managers.

177. Every manager appointed by the Court of Wards shall—

(*a*) give such security as the Court of Wards thinks fit, duly to account for what he shall receive in respect of the rents and profits of the property for which he is appointed;

(*b*) pass his accounts at such periods and in such form as the Court of Wards directs;

(*c*) pay the balance due from him thereon;

(*d*) apply for the sanction of the Court of Wards to any act which may involve the property in expense not previously sanctioned by such Court;

(*e*) be entitled to such allowance, as the Court of Wards thinks fit, for his care and pains in the execution of his duties;

(*f*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Power for Court of Wards to exercise powers through Deputy Commissioners or others.

177A.† The Court of Wards may exercise all or any of the powers conferred on it by this Act through the Deputy Commissioners of the districts in which any part of the property of its wards may be situated or through any other person whom it may appoint for such purpose.

CHAPTER IX.—Powers of Officers.

A.—Powers of Assistant Commissioners.

Powers of Assistant Commissioners in charge of sub-divisions.

178. An Assistant Commissioner in charge of a sub-division shall as such have the following powers:—

(*a*) to refer cases for inquiry or decision to his subordinates,

(*b*) to withdraw cases from his subordinates, and to deal with them himself, or to refer them for disposal to any other subordinate officer competent to deal with them;

* In s. 176, the words quoted have been substituted for the words, "the Court of Wards," by Act XX. of 1890, s. 30.

† S. 177A has been inserted by Act XX. of 1890, s. 31.

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(*c*) to order changes in the proprietary register;

(*d*) to levy fees for mutations;

(*e*) to receive notices of, and to enquire into, cases of reported transfers;

(*f*) to levy fines, under section 64;

(*g*) to declare the person best entitled to property, and put him in possession, under section 65;

(*h*) to enquire into and dispose of disputes under section 66;

(*i*) to report on revenue-free holdings, and to assess revenue on resumed grants;

(*j*) to assess alluvial lands;

(*k*) to receive applications for and make partitions under Chapter V. of this Act, subject to the confirmation of the Deputy Commissioner of the district;

(*l*) to impose fines for injuries to boundary-marks, and in certain cases apportion the charges of re-erecting and repairing boundary-marks;

(*m*) to call on owners to erect or repair boundaries, and, in default, to erect and repair, and charge the cost to owners, and to decide disputes regarding boundaries;

(*n*) to attach and sell moveable property of defaulters under section 117;

(*o*) to fix, under section 157, the area of the land to be held as a tenant with right of occupancy and the rent to be paid for it by proprietors of mahâls which have been attached, transferred, held under direct management, farmed, or sold, under the provisions of this Act, for land in their cultivating occupancy;

(*p*) [*Repealed by Act XII. of 1891, Sch. I.*]

Powers of Assistant Commissioners of first class not in charge of sub-divisions.

179. Assistant Commissioners of the first class, not in charge of sub-divisions of districts, shall exercise all or any of the powers conferred on Assistant Commissioners of the first class in charge of sub-divisions, in such cases or class of cases as the Deputy Commissioner of the district may, from time to time, refer to them for disposal.

Powers of Assistant Commissioners of second class.

180. All Assistant Commissioners of the second class shall have power to investigate and report on such cases as the Deputy Commissioner of the district or Assistant Commissioner in charge of a sub-division of a district may, from time to time, commit to them for investigation and report.

B.—Powers of Settlement Officers.

Powers of officers in charge of a settlement.

181. Officers in charge of a settlement may exercise all the powers conferred by or under this Act on Settlement Officers, and by section 10 on the Deputy Commissioner of the district, but none but an officer in charge of a settlement or an Assistant Settlement Officer especially empowered by the Chief Commissioner shall have power—

(*a*) to frame proposals for assessment;

(*b*) to distribute the assessment;

(*c*) to re-distribute land or revenue under section 31;

(*d*) to determine the rent payable under section 40 by under-proprietors or lessees;

(*e*) to exclude proprietors from settlement for refusal to engage;

(*f*) to adjust the rent of excluded proprietors;

(*g*) to resume and assess revenue-free land.

Powers of Assistant Settlement Officers.

182. All other powers conferred on Settlement Officers by this Act shall be exercised by Assistant Settlement Officers, under such restrictions as the officer in charge of a settlement may from time to time impose.

Investing of Settlement Officers with powers of Deputy Commissioner and Assistant Commissioner.

183. The Chief Commissioner may* invest any officer in charge of a settlement with all or any of the powers of a Deputy Commissioner under this Act, and any Assistant Settlement Officer with all or any of the powers conferable on an Assistant Commissioner under this Act, within such limits, and with such restrictions, and for such period, as he thinks fit.

CHAPTER X.—APPEALS.

Officers to whom appeals lie.

184. Appeals shall lie under this Act as follows:—

(*a*) to the "Board,"† from any order passed by a Commissioner, except such orders as are made on appeal from orders passed by Deputy Commissioners in the exercise of their appellate jurisdiction;

(*b*) to the Commissioner, from orders original or appellate, passed by Deputy Commissioners or officers in charge of a settlement in any proceeding held under the provisions of this Act;

(*c*) to the Deputy Commissioner, from orders passed by any Assistant Commissioner;

(*d*) to the officer in charge of a settlement, from orders passed by an Assistant Settlement Officer.

Limitation of appeals.

185. No appeal under section 184, clauses (*c*) and (*d*), shall be brought after the expiration of thirty days from the date of the order complained of.

No appeal under the same section, clause (*b*), shall be brought after the expiration of six weeks from the date of the order complained of, unless otherwise specially provided.

No appeal under the same section, clause (*a*), shall be brought after the expiration of two months from the date of the order complained of.

Time to be excluded.

186. In computing the period prescribed for an appeal under this chapter, the day on which the order complained of was passed, and the time requisite for obtaining a copy of such order, shall be excluded.

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* In s. 183 the words "with the previous sanction of the Governor-General in Council," repealed by Act XIV. of 1878, s. 4, have here been omitted.

† In s. 184 the word "Board" has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 15.

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Admission of appeal after period of limitation.

187. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order under this section admitting an appeal.

Procedure on admitting appeal.

188. The officer to whom the appeal lies may either admit or summarily reject the appeal. If he admit the appeal, he may reverse, modify, or confirm the order appealed against, or he may direct such further investigation to be made, or such additional evidence to be taken, as he may think necessary, or he may himself take such additional evidence.

Suspension of order appealed against.

189. In every case in which an appeal is admitted, the execution of the order appealed may, pending the result of the appeal, be suspended.

Power to call for files of subordinate officers.

190.* The Board and every Commissioner may call for the file of any proceeding held by any officer subordinate to it or him respectively, and may pass such orders thereon as it or he thinks fit.

CHAPTER XI.—REFERENCE TO ARBITRATION.

Power to refer disputes to arbitration.

191. The "Board,"† a Commissioner of a Division, a Deputy Commissioner, an Assistant Commissioner of the first class, an officer in charge of a settlement, or an Assistant Settlement Officer, may, with the consent of the parties, by order, "refer any dispute before it or him"‡ to arbitration; and any officer acting under the provisions of sections 102 to 107, both inclusive, may, with the consent of the parties, refer to arbitration any dispute arising before him respecting the matters mentioned in the same sections.

What to be specified in order of reference.

192. In referring any such dispute to arbitration, the officer making the reference shall specify, in the order of reference, the precise matter submitted to the arbitrators, and such period as he may think reasonable for the delivery of the award;

and he may from time to time extend such period.

Appointment of arbitrators.

193. The parties to the case may each nominate either one or two arbitrators, provided that each party shall nominate the same number;

and a third or fifth arbitrator (as the case may be) shall be appointed by the parties, or, in the event of their being unable to agree, by the officer making the reference.

Power to excuse arbitrator from serving, and to call for nomination of substitute.

194. Every officer making a reference under this chapter may, on good cause shown, excuse any person from serving as an arbitrator, and may call on the party who nominated such person to nominate another in the place of the person so excused.

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* S. 190 has been substituted by Act XX. of 1890, s. 32.

† In s. 191, the word quoted has been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 33.

‡ In s. 191, the words quoted have been substituted for the words, "refer any dispute before him," by Act XX. of 1890, s. 33.

Nomination of new arbitrator in place of one dying or failing to act.

195. If an arbitrator die, desire to be discharged, or refuse or become incapable to act, the party who nominated him shall nominate another person in his place.

Nomination by officer when parties fail.

196. If in any of the cases provided for by section 194, or section 195, any party fail for a week to nominate in manner aforesaid, the officer making the reference shall appoint some person to act as arbitrator.

Award.

The arbitrators shall determine and award concerning the matters referred to them for arbitration; and the parties disputing, and all persons claiming through them, respectively, shall abide by and perform the award of the arbitrators.

Summoning parties to give evidence.

197. If the arbitrators require the presence of the parties, or any other persons whose evidence may be necessary, they shall apply to the officer making the reference, who shall summon such parties or persons;

Obligation of persons summoned.

and all such parties or persons shall be bound to attend, either in person or by agent, as the arbitrators may require, and to state the truth as to the subject-matter of the reference, and to produce such documents and other things as may be required before the arbitrators.

Preparation and submission of award.

198. The award shall be made in writing under the hands of the arbitrators, and shall be submitted by them to the officer making the reference, who shall cause notice to be served on the parties to attend and hear the award.

In what cases award or subject of arbitration may be remitted to arbitrators.

199. The officer making the reference may remit the award or any of the matters referred to arbitration to the re-consideration of the same arbitrators,

(*a*) if the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration;

(*b*) if the award is so indefinite as to be incapable of execution;

(*c*) if an objection to the legality of the award is apparent upon the face of the award.

Grounds on which award may be set aside.

200. No award shall be liable to be set aside except on the ground of corruption or misconduct of all or any of the arbitrators.

Application to set aside.

Any application to set aside an award shall be made within ten days after the day appointed for hearing the award.

Decision according to award.

201. If the officer making the reference does not see cause to remit the award or any of the matters referred to arbitration for re-consideration in the manner aforesaid;

and if no application has been made to set aside the award,

or if he has refused such application,

he shall decide in accordance with the award of the majority of the arbitrators,

and shall fix the amount to be allowed for the expenses of the arbitration, and direct by and to whom, and in what manner, the same shall be paid.

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Bar to appeal any suit in Civil Court.

202. Such decision shall not be open to appeal, and shall be at once carried out;

and no Civil Court shall entertain any suit for the purpose of setting it aside, or against the arbitrators on account of their award.

CHAPTER XII.—OF PATWARIS.

203 to **215.** [*Repealed by Act XIII. of 1882.*]

CHAPTER XIII.—MISCELLANEOUS.

Place for holding Court.

216. Subject to the orders of the Chief Commissioner,

(*a*) a Commissioner may hold his Court at any place within his division that he thinks fit:

(*b*) a Deputy Commissioner, an Assistant Commissioner (whether in charge or not of a sub-division of a district), or an officer in charge of a settlement or Assistant Settlement Officer, may hold his Court at any place within the limits of the district to which he is appointed; and

(*c*) a Tahsildár may hold his Court at any place within the limits of his tahsil.

Power to summon persons to give evidence and produce documents.

217.* The Board and any officer mentioned in the last preceding section may summon any person whose attendance it or he considers necessary for the purpose of any investigation, suit, or other business before it or him.

All persons so summoned shall be bound to attend, either in person or by authorized agent, as the Board or such officer may direct,

and to state the truth upon any subject respecting which they are examined,

and to produce such documents and other things as may be required.

Conduct of proceedings.

218. All proceedings held under the provisions of this Act shall be conducted according to the rules for the time being prescribed under section 220.

Matters excepted from cognizance of Civil Courts.

219. No Civil Court shall exercise jurisdiction over any of the following matters:—

(*a*) the claim of any person to be settled with, or

the validity of any engagement with Government for the payment of revenue, or

the amount of revenue, cess, or rate to be assessed on any mahál, or portion of a mahál, under this or any other Act for the time being in force, or

the rent to be paid to a proprietor by an under-proprietor or a lessee whose rent has been fixed by the Settlement Officer:

(*b*) any claims connected with or arising out of any process enforced on account of neglect or refusal to accept the assessment or terms of sub-settlement proposed by the Settlement Officer:

* In s. 217, the first two paragraphs have been substituted by Act XX. of 1890, s. 34, for those originally enacted.

(*c*) the formation of the settlement-record,

the preparation, signing, or attestation of any of the documents contained therein, or

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the notification of settlement:

(*d*) the distribution, on partition, of the land or allotment of the revenue of a mahál, or of the rent of an under-proprietary tenure, or of rent payable by lessees whose rent has been fixed by a Settlement Officer:

(*e*) the determination of the rent to be paid by any person under section 86:

(*f*) claims connected with, or arising out of, the collection of revenue or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue, other than claims under section 156:

(*g*) claims to set aside a sale for arrear of revenue, other than claims under section 148.

In all the above cases, jurisdiction shall rest with the revenue officers only.

Power to make rules for purposes of Act.

220. The "Board, with the previous sanction of the Chief Commissioner,"* may, from time to time,† make and issue rules consistent with this Act, and relating to the following matters:—

(*a*) the qualifications, appointment, duties, remuneration, punishment and dismissal of—

(1) tahsildárs,

(2) lambardárs or representatives of village-communities,

(3) kanúngos or superintendents of revenue-records;

(*b*) for regulating the assessment of land gained by alluvion or the reduction of the assessment of a mahál in consequence of diluvion;

(*c*) the procedure to be followed by any officer or other person who, under any provision of this Act, is required or empowered to take action in any matter;

(*d*) the person by whom, and the time and manner at or in which, anything, for the doing of which provision is hereinbefore made in this Act, shall be done;

(*e*) the form and contents of reports to be furnished by officers required or empowered to take action in any matter, and the period within which such reports shall be furnished;

(*f*) the form and contents of the registers and lists kept under this Act;

(*g*) the mode of recovering arrears of rent under section 158, the extent to which they may be recovered, and the amount which may be retained by the Deputy Commissioner to defray the expenses of such recovery;

(*h*) the cases in which taluqdárí mahals and mahals, whether under-proprietary or held by lessees whose rents have been fixed by the Settlement Officer or other competent authority, may be partitioned under this Act;

* In s. 220, the words quoted have been substituted for the words, "Chief Commissioner," by Act XX. of 1890, s. 23.

† In s. 220, the words, "with the previous sanction of the Governor-General in Council," repealed by Act XIV. of 1878, s. 4, have here been omitted.

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(*i*) the costs of partitions under this Act and the persons by whom they are to be paid, and the mode of enforcing such payment against such persons or their shares in the property of which partition has been made;

(*j*) the issue, under section 114, of writs of demand or summons to appear, and the costs recoverable from the defaulter, and the officer by whom such writs and summonses shall be issued;

(*k*) and generally to carry out the provisions of this Act.

Recovery of fines and costs.

221. All fees, fines, costs, and other moneys ordered to be paid under this Act shall be recoverable as if they were an arrear of land-revenue.

ACT XVIII. OF 1876.

THE OUDH LAWS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH OCTOBER 1876.

An Act to declare and amend the Laws to be administered in Oudh.

Preamble.

WHEREAS it is expedient to declare and amend the laws to be administered in Oudh; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Oudh Laws Act, 1876:"

Local extent.

It extends only to the territories for the time being under the administration of the Chief Commissioner of Oudh;

Commencement.

And it shall come into force on the passing thereof.

Repeal of enactments.

2. The Regulations, Acts, Rules, and Orders mentioned or referred to in the first schedule hereto annexed shall be repealed to the extent mentioned in the third column of the said schedule.

PART II.

GENERAL LAWS TO BE ADMINISTERED IN OUDH.

Statutory law to be administered in Oudh.

3. The law to be administered by the Courts of Oudh shall be as follows:—

(*a*) the laws for the time being in force regulating the assessment and collection of land-revenue;

(*b*) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(1) any custom applicable to the parties concerned which is not contrary to justice, equity, or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority; Act XVIII. of 1876.

(2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to;

(*c*) the rules contained in this Act;

(*d*) the rules published in the local official Gazette as provided by section 40, or made under any other Act for the time being in force in Oudh;

(*e*) the Regulations and Acts, specified in the second schedule hereto annexed, subject to the provisions of section 4, and to the modifications mentioned in the third column of the same schedule;

(*f*) subject to the modifications hereinafter mentioned, all enactments for the time being in force, and expressly, or by necessary implication, applying to British India or Oudh, or some part of Oudh;

(*g*) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity, and good conscience.

Validity of local customs and mercantile usages.

4. All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity, or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

PART III.

CHAPTER I.—Dower among Muhammadans.

Muhammadan dower-contracts how to be enforced.

5. Where the amount of dower stipulated for in any contract of dower by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien, or otherwise to the defendant; but the amount of the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife.

Rule applicable after husband's death.

This rule shall be applicable whether the suit to enforce the contract be brought in the husband's lifetime or after his death.

CHAPTER II.—Pre-emption.

Right of pre-emption.

6. The right of pre-emption is a right of the persons hereinafter mentioned or referred to to acquire, in the cases hereinafter specified, immoveable property in preference to all other persons.

Presumption as to its existence.

7. Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

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(*a*) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in section 40 of the Oudh Land-revenue Act, and

(*b*) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights affecting such lands.

Its existence in towns to be proved.

8. The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein, and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Devolution of right when property to be sold or foreclosed is a proprietary or under-proprietary tenure.

9. If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,

1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor;

2ndly, to co-sharers of the whole mahál in the same order;

3rdly, to any member of the village-community; and

4thly, if the property be an under-proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot.

Notice to pre-emptors.

10. When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be.

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupál, or other public place of the village or city in which the property is situate.

Loss of right of pre-emption.

11. Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless, within three months from the date of such notice, he or his agent pays or tenders the price aforesaid to the person so proposing to sell.

Right of pre-emptor on foreclosure.

12. When the right of pre-emption arises in respect of the foreclosure of a mortgage, any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender, to the mortgagee or his successor in title, the amount specified in such notice, and shall thereupon acquire a right to purchase the property.

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage, at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any addi-

tional costs which may have been properly incurred by the mortgagee or his successor in title. Act XVIII. of 1876.

13. Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) :—

Suit to enforce right of pre-emption.

(*a*) that no due notice was given as required by section 10;

(*b*) that tender was made under section 11 or section 12 and refused;

(*c*) in the case of a sale, that the price stated in the notice was not fixed in good faith;

(*d*) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged.

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold.

If, in the case of a mortgage, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value.

14. If the Court find for the plaintiff, the decree shall specify a day on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

Decree to fix time for payment.

15. If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void and the plaintiff shall, so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.

Effect of non-payment of purchase-money.

CHAPTER III.—Procedure of the Courts.

16. The Judicial Commissioner's Circular No. 104 of July 1860 shall be held to have been a notification within the meaning of section 24 of Act No. XIV. of 1859; and such Act* shall be deemed to have been in force in Oudh from the fourth day of July 1862; and all orders and decrees passed under the rules contained in the said Circular, or under the said Act, shall be deemed to have been passed under a law in force for the time being.

Rule of limitation.

Nothing in this section affects the provisions of sections 102, 104, 105, 106, 107, and 108 of the Oudh Rent Act (XIX. of 1868)† with regard to the limitation of suits under that Act.

17, 18. [*Repealed by Act XII. of 1891, Sch. I.*]

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* Act XIV. of 1859 has been repealed by Acts IX. of 1871 and I. of 1877.

† Act XIX. of 1868 has been repealed by Act XXII. of 1886, s. 2.

Act XVIII. of 1876.

Rules for taking evidence.

19. Sections 181 to 190 (both inclusive) of the Code of Civil Procedure* are hereby repealed, so far as the Province of Oudh is concerned, and the following section is substituted therefor:—

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed, and shall form part of the record of the case.

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given.

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it.

"If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection.

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination.

"If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record."

Execution-sale of ancestral and acquired property in land.

20. So much of section 266 of the Code of Civil Procedure† as renders land liable to sale in execution of a decree, shall be subject to the following restriction:—

No ancestral property in land shall be sold in satisfaction of a decree without the permission of the Chief Commissioner; no self-acquired property in land shall be so sold without the permission of the Commissioner.

Explanation.—In this section the words "ancestral property" include the immoveable property of persons admitted to engagement for the land-revenue at the summary settlement of 1858-59.

21. [*Repealed by Act XIII. of 1879.*]

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* In s. 19 the reference to s. 172 of Act VIII. of 1859 has been altered in accordance with Act XIV. of 1882, s. 3.

† In s. 20 the reference to s. 205 of Act VIII. of 1859 has been altered in accordance with Act XIV. of 1882, s. 3.

22. Notwithstanding anything contained in the said Code* any Civil Court sitting within the local limits of the jurisdiction of the Lakhnau Civil Court, but exercising jurisdiction beyond such limits, may cause summonses, warrants, notices, and other processes to be served within the local limits of the jurisdiction of the Lakhnau Civil Court without causing the same processes to be served through such Court. Act XVIII. of 1876.

Service of process within jurisdiction of Lakhnau Civil Court.

23,24. [*Repealed by Act XXII. of 1886.*]

25. Any proprietor or under-proprietor of a mahál or portion of a mahál, which is attached, transferred, held under direct management, farmed, or sold under the provisions of the Code of Civil Procedure,* who may, at the date of the order for such attachment, transfer, management, farm, or sale, hold any land within such mahál or portion of a mahál in his cultivating occupancy, shall be deemed to be a tenant with a right of occupancy in respect of so much of such land as the Deputy Commissioner shall determine, and the rent to be paid by him for land so determined shall be fixed by the Deputy Commissioner under the provisions of the Oudh Rent Act, 1886.†

Right of occupancy in judgment-debtor's sir-land.

26. Notwithstanding anything contained in the Legal Practitioners Act, 1879,‡ all persons duly admitted and enrolled as Revenue Agents under that Act in the territories for the time being under the administration of the Chief Commissioner of Oudh may appear, plead, and act in suits under the Oudh Rent Act, 1886,† in the Courts of officers exercising the powers of Assistant Collectors, Deputy Collectors, Collectors, and Commissioners under the same Act.

Revenue Agents authorized to appear, &c., in rent-suits.

27. With the sanction of the Chief Commissioner, the Judicial Commissioner may from time to time make rules consistent with this Act and with the Code of Civil Procedure,*

Power to make rules for custody and sale of attached property.

(*a*) for the custody and sale of moveable property attached in execution of decrees;

(*b*) for the levy of a fee or commission on the sale of attached property, and the disposal of the funds accruing from such fees;

(*c*) as to the appointment and remuneration of persons by whom property is to be attached, kept in custody, and sold; and

(*d*) as to the appointment and remuneration of persons by whom local investigations under section 392, and investigations and adjustments of accounts under section 394 of the Code of Civil Procedure,§ are to be made.

28. [*Repealed by Act XIII. of 1879.*]

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* In ss. 22, 25, and 27, the references should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

† In ss. 25 and 26, the references to Act XIX. of 1868 have been altered in accordance with Act XXII. of 1886, s. 2.

‡ The reference to Act XX. of 1865 has been altered in accordance with Act XVIII. of 1879, s. 2.

§ In s. 27, cl. *d*, the references to ss. 180 and 181 respectively of Act VIII. of 1859 have been altered in accordance with Act XIV. of 1882, s. 3.

Act XVIII. of 1876.

CHAPTER IV.—Village and Road Police

Right to nominate village-policemen.

29. The nomination to the post of village-policeman shall be made by the zemindar of the village, or, where there are more zamindárs than one, by the lambardár as their representative; and where there are more lambardárs than one, the opinion of the majority (unless there is some special provision to the contrary in the village-administration-paper) shall prevail.

Obligation to nominate.

30. Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

Discretion to appoint or reject nominee.

31. The person so nominated shall, after due enquiry into his age, character, and ability, be appointed or rejected at discretion by such Magistrate, or by some officer authorized by him in that behalf.

Power to Magistrate to appoint.

32. In default of such nomination within the said fifteen days, the Magistrate of the district shall appoint such person as he thinks fit to the vacancy.

Procedure in case of rejection of nominee.

If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made, but the nominee is again rejected, the Magistrate of the district shall appoint such person as he thinks fit to the vacancy.

Appointment of road-police.

33. Subject to the rules to be framed under section 39 and for the time being in force, the Magistrate of the district may from time to time appoint persons to be the road-police of his district.

Duties of village and road-policemen.

34. Every village-policeman and every road policeman shall perform the following duties:—

(*a.*)—He shall give immediate information to the officer in charge of the police-station appointed for his village or beat,—

(1) of every unnatural, suspicious, or sudden death occurring in the village of which he is chaukídár, or within his beat;

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass, and

(3) of all attempts and preparations to commit, and abetments of, any of the said offences:

(*b.*)—He shall keep the police informed of all disputes which are likely to lead to any riot or serious affray:

(*c.*)—He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (*a*), clause (*2*), of this section:

(*d.*)—He shall observe, and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat: Act XVIII. of 1876.

(*e.*)—He shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood;

(*f.*)—He shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

Procedure on arrest by village or road-policeman.

35. Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police-station within the jurisdiction of which his village or beat is situate.

Dismissal of village and road-policemen.

36. The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Where any village-policeman is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district; and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper.

Acts punishable.

37. Every village-policeman and road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

or withdrawing from the duties of his office without permission, and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 29, 32, and 33 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

Penalty.

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

Fines to be credited to such fund as Government appoints.

38. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the Local Government from time to time appoints.

CHAPTER V.—SUBSIDIARY RULES.

Power to make rules.

39. The Chief Commissioner may, from time to time,* make rules consistent with this Act as to—

(*a*) the discipline and remuneration of the village and road-police, and the regulation of their number, location, and duties;

(*b*) the disposal of unclaimed property under Act No. V. of 1861 (*for the regulation of Police*), sections 25, 26, and 27;

* In s. 39, para. 1, certain words, repealed by Act XIV. of 1878, s. 5, have here been omitted.

Act XVIII. of 1876.

(*c*) public health and conservancy at fairs and other large public assemblies, and the maintenance of a proper watch and ward at such fairs and assemblies;

(*d*) imposing with the previous sanction of the Governor-General in Council taxes for those purposes only;

(*e*) the manner in which records, civil, criminal, and revenue, shall be kept; the appointment and removal of the persons entrusted with the custody of records, and all other matters connected with such custody;*

(*f*) the appointment, duties, punishment, and dismissal of all ministerial officers other than those employed in the Civil Courts and those in respect of whom provision is made in the "Oudh Land Revenue Act, 1876;" †

(*g*) the extent of land in respect of which a proprietor or under-proprietor is to be held, under section 25, to be a tenant with a right of occupancy.

40. All rules made by the Chief Commissioner under section 39, and all rules made by the Judicial Commissioner under section 27, shall be published in the local official Gazette, and shall thereupon have the force of law.

Publication of rules.

41. [*Repealed by Act XII. of 1891, Sch. I.*]

42. Whoever breaks any rule made or continued under this Act, not being a rule made by the Judicial Commissioner, shall, on conviction before a Magistrate, be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for breach of rules.

CHAPTER VI.—MISCELLANEOUS.

Honorary Civil Jurisdiction.

43. [*Repealed by Act XIII. of 1879.*]

Honorary Police Officers.

44. The Chief Commissioner may, from time to time, confer on any person whom he thinks fit any power which may be exercised by a police-officer under any Act for the time being in force, and withdraw any power so conferred.

Honorary police-officers.

Creation and Alteration of Districts and Sub-divisions.

45. [*Repealed by Act XX. of 1890, s. 35.*]

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* In s. 39, cl. *e*, certain words, repealed by Act III. of 1879, have here been omitted.

† In s. 39, cl. *f*, the words quoted have been substituted for the words, "Oudh Revenue Act," by Act XII. of 1891, Sch. II.

THE FIRST SCHEDULE.

(*See section 2*)

Number and year.	Title.	Extent of repeal.
	All Bengal Regulations now in force in Oudh, except those specified in the second schedule,	The whole.
	and except when expressly provided otherwise in this Act, all rules, laws, and regulations, made for or extended to the Province of Oudh, or any part thereof, which have acquired the force of law under the Indian Councils Act.*	The whole.
	Government Notification No. 4325 of 6th August 1861.	The whole.
XXI. of 1857...	Gambling	Sections 10 to 15.
XIX. of 1863...	Partition	The whole.
XXXII. of 1871...	The Oudh Civil Courts Act ...	Section 31.

THE SECOND SCHEDULE.

(*See section 3.*)

PART I.—BENGAL REGULATIONS.†

Number and year.	Subject.	Modifications.
XXXIII. of 1803...	Embezzlement by Native Officers.	In section 1 and in section 2, clause *First, before* "sezawuls," *insert* "tahsildárs." In section 2, *after* the first clause, *insert* "*Second.*—The responsibility of the sureties of tahsildárs extends to the several cases provided for in this Regulation." In section 3, *for* "Dewanny Adawlut of the Zillah, the Judge of which Court shall detain him," *read* "District, where he shall be detained;" *for* "real or personal," *read* "moveable or immoveable;"‡ and *omit* the words and figures "and the rules in Regulation XXVII., 1803, regarding suits so carried on by the Collectors are to be held applicable to it."§ *Omit* section 8.

* 24 and 25 Vic., c. 67.

† So much of Act XVIII. of 1876 as relates to the following enactments has been repealed by the Acts noted against each respectively. The references to these enactments in this schedule have therefore been omitted.

Ben. Reg. XVII. of 1806	Rep. by Act IV. of 1882.
" " XX. of 1810	Rep. by Act XIII. of 1889.
" " V. of 1817	Rep. by Act VI. of 1878.
" " VI. of 1819	Rep. by Act XII. of 1891.
Act XL. of 1858.	Rep. by Act VIII. of 1890.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., and by Act XX. of 1890, s. 35, have been omitted.

§ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XVIII. of 1876.

THE SECOND SCHEDULE—*continued.*

(*See section 3.*)

PART I.—BENGAL REGULATIONS—*continued.*

Number and year.	Subject.	Modifications.
X. of 1804...	Punishment by Courts-martial of certain State-offences.	*Omit* section 1. In section 2 *for* "the British territories subject to the Government of the Presidency of Fort William," *read* "the territories under the administration of the Chief Commissioner of Oudh." In section 3, *for* "real and personal," *read* "moveable or immoveable."
XI. of 1806...	Assistance to troops and travellers passing through Districts.	*Omit* sections 1, 7, 9 to 20 (both inclusive), and so much of the rest of the Regulation as authorizes Collectors and their native officers, or Magistrates and their police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers. *For* "Collectors of Revenue" and "Collector," *read* "Deputy Commissioner" throughout the Regulation. In sections 2 and 3, *for* "the Company's territories," *read* "Oudh." In section 2, *omit* the last sentence. In section 4, clause *Third, for* "Governor-General in Council," *read* "Chief Commissioner." In section 5, *omit* "the Company's."* In section 6, *for* "Magistrate" *read* "Deputy Commissioner," and *for* "on the part of the Collector," *read* "by the Deputy Commissioner." In section 8, *for* "the Company's provinces," *read* "Oudh."†
III. of 1818...	State Prisoners ...	In section 1, *omit* "situated within the territories dependent on the Presidency of Fort William," and from "which are to take effect," to the end of the section. In section 2, clause *Third, omit* "within the territories subject to the Presidency of Fort William." In section 4, *omit* clause *First.* In the same section, clause *Second, for* "Zillah or City Magistrate," *read* "Deputy Commissioner," and *for* "Judge of Circuit," *read* "Commissioner of Division." In section 9, *for* "to the Provincial Court of Appeal and Circuit and to the Sudder Dewanny Adawlut and Nizamut Adawlut," *read* "and to the Judicial Commissioner." *Omit* section 10.

* Here certain words, repealed by Act XX. of 1890, s. 35, have been omitted.

† Here certain words, repealed by Act XI. of 1891, Sch. I., have been omitted.

THE SECOND SCHEDULE—*continued.*

(*See section 3.*)

PART I.—BENGAL REGULATIONS—*concluded.*

Number and year.	Subject.	Modifications.
XI. of 1822 ...	Non-liability of Government for errors of a Court of Justice.	*Omit* the whole except section 38.
VI. of 1825 ...	Supply of troops on the march.	In the preamble, *omit* the last twenty words. In section 2, *omit* "in pursuance of section 3, Regulation XI., 1806," and *omit* "sicca." In section 4, *for* "Board of Revenue in whose jurisdiction the district may be situate" and "Board," *read* "Commissioner." In section 5, *omit* "on the stamped paper prescribed for other appeals to the Revenue Boards," and *for* "the proper Board" and "the Board," *read* "the Commissioner."
XI. of 1825 ...	Alluvion and Diluvion ...	*Omit* section 1. In section 3, *omit* "either" and "or the sea." In section 4, clause *First*, *omit* "whether" and "or of the sea," and *for* "the provisions of Regulation II., 1819, or of any other Regulation in force," *read* "any law in force for the time being:" clause *Third*, *omit* "or in the sea" and "or sea;" clause *Fifth*, *omit* "or the sea." In section 5, *for* "Zillah and City Magistrates," *read* "Deputy Commissioners."

PART II.—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Modifications.
XIX. of 1853 ...	Section 26, Recusant witnesses.	*Omit* "in addition to any proceedings under this Act."
XX. of 1856 ...	Chaukídárs ...	In the preamble, *after* "Bengal," *add* "and the territories under the administration of the Chief Commissioner of Oudh." *Omit* the words "of circuit" wherever they occur after "Commissioner." *Omit* section 40.

Act XIX. of 1876.

THE SECOND SCHEDULE—*concluded.*

(*See section 3.*)

PART II.—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL—*concluded.*

Number and year.	Subject.	Modifications.
XIII. of 1857 ...	Opium ...	In the title, *after* "the Presidency of Fort William in Bengal," *read* "and the territories under the administration of the Chief Commissioner of Oudh."* In section 3, *omit* "being covenanted servants of the Company."
XL. of 1858 ...	Minors	In the title, *for* "the Presidency of Fort William in Bengal," *read* "Oudh." In section 2, *for* "estates paying revenue to Government," *read* "mahals assessed to revenue or held revenue-free."
XXII. of 1871 ...	Chaukídárs... ...	In section 1, *after* "Presidency," *insert* "or territories." In section 3, *omit* the words "of circuit." *Omit* section 6.

ACT XIX. OF 1876.†

THE DRAMATIC PERFORMANCES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER 1876.

An Act for the better control of Public Dramatic Performances.

WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious, or obscene; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Dramatic Performances Act, 1876;"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

"Magistrate" defined.

2. In this Act "Magistrate" means, in the Presidency Towns, a Magistrate of Police, and elsewhere the Magistrate of the District.

* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† Act XIX. of 1876 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1886, Pt. I., p. 504. The Act has, with the exception of s. 12, been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX, of 1886. But see also foot-note to s. 10 of this Act (XIX. of 1876).

Power to prohibit certain dramatic performances.

3. Whenever the Local Government is of opinion that any play, pantomime, or other drama performed or about to be performed in a public place is—

(*a*) of a scandalous or defamatory nature, or

(*b*) likely to excite feelings of disaffection to the Government established by law in British India, or

(*c*) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency Towns and Rangoon, the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

Power to serve order of prohibition.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room, or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished, on conviction before a Magistrate, with imprisonment for a term which may extend to three months, or with fine, or with both.

Penalty for disobeying order.

Power to notify order.

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

Penalty for disobeying prohibition.

6. Whoever, after the notification of any such order—

(*a*) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

(*b*) in any manner assists in conducting any such performance, or

(*c*) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(*d*) being the owner or occupier, or having the use of, any house, room, or place, opens, keeps, or uses the same for any such performance, or permits the same to be opened, kept, or used for any such performance,

shall be punishable, on conviction before a Magistrate, with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to call for information.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government or such officer as it may specially empower in this behalf, may apply to the author, proprietor, or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

Act XIX. of 1876.

Power to grant warrant to police to enter and arrest and seize.

8. If any Magistrate has reason to believe that any house, room, or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of police to enter, with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room, or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses, and other articles found therein, and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124A and 294.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

Power to prohibit dramatic performances in any local area, except under license.

10.* Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may, with the sanction of the Governor-General in Council, declare, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment "within such area"† unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable, on conviction before a Magistrate, with imprisonment for a term which may extend to three months, or with fine, or with both.

Powers exercisable by Governor-General.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor-General in Council.

Exclusion of performances at religious festivals.

12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

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* In Upper Burma for the first two paragraphs of s. 10 the following are to be substituted:—

"No dramatic performance shall take place except under a license granted by the District Magistrate or such officer as the District Magistrate may appoint in this behalf.

"Any person who promotes or takes part in any dramatic performance in contravention of the foregoing portion of this section shall be punishable, on conviction before a Magistrate, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."—See Act XX. of 1886, s. 7, cl. *e*.

† The words quoted are not applicable to Upper Burma.—See Act XX. of 1886, s. 7, cl. *e*.

ACT XX. OF 1876.

Act XX. of 1876.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER 1876.

An Act to give better effect to certain Agreements with the Thákur of Bhaunagar.

Preamble.

WHEREAS the villages mentioned in the schedule hereto annexed (hereinafter called the scheduled villages) are the property of the Thákur of Bhaunagar, and were, by the Treaty of Bassein, dated the thirty-first day of December 1802, separated from the Native State or States known as the territory of Káthiáwád, and ceded to the British Government:

and whereas, by Regulation VI. of 1816* of the Governor of Bombay in Council, the Regulations in force throughout the Presidency of Bombay were extended to the said villages, and such villages thereby became subject to the jurisdiction of the Revenue, Civil, and Criminal Courts established in that Presidency:

and whereas the said Thákur of Bhaunagar is also the proprietor of divers villages forming part of the said territory, and hereinafter called the Káthiáwád villages:

and whereas the British Government have exercised certain powers of government over the said territory, but such territory has never been treated as being British territory, nor as having been vested in the East India Company, nor in Her Majesty the Queen of Great Britain and Ireland and Empress of India, and the said Káthiáwád villages have consequently never been subject to the laws in force in the Presidency of Bombay:

and whereas in the year 1820 the British Government established a Political Agency for the said territory of Káthiáwád:

and whereas in the year 1857 the said Thákur was, by an order of the British Government, invested in respect of the same villages with certain powers of sovereignty limited by and subject to the rules laid down for the government and conduct of the said Káthiáwád Political Agency:

and whereas, for divers reasons of State affecting the welfare of British India, the British Government became desirous of ceding to the Thákur of Bhaunagar the scheduled villages, to be held by him on the same conditions as those on which he holds the Káthiáwád villages, and for that purpose certain agreements were made and certain notifications published which were intended to operate as a cession of the scheduled villages:

and whereas on the twenty-ninth day of January 1866, the Governor of Bombay in Council published a notification declaring that, in accordance with the agreement last hereinbefore recited, the scheduled villages were, from and after the first day of February 1866, removed from the jurisdiction of the Revenue, Civil, and Criminal Courts of the Bombay Presidency, and transferred to the supervision of the said Political Agency in Káthiáwád on the same conditions as to jurisdiction as the said Káthiáwád villages:

and whereas the intention of the said agreements and notifications was that the villages comprised therein should be ceded to and vested in the Thákur of Bhaunagar, to be held by him on the terms on which he holds the Káthiáwád villages:

and whereas ever since the first day of February 1866, the scheduled villages have been governed according to the intention of the said agreements,

* Repealed by Bom. Reg. I. of 1827.

Act XX. of 1876.

and acts of executive authority have been done, proceedings taken, and decrees and sentences passed by the Thákur of Bhaunagar and his officers, and by the officers of the said Political Agency, and by the Courts of justice appointed to exercise jurisdiction within the limits of the said Political Agency:

and whereas it now appears that such agreements and notifications were not worded so as to express their true intention, and that the scheduled villages did not thereby cease to be British territory, or to be subject to the laws in force in the Presidency of Bombay:

and whereas, by a notification, dated the fifth day of December 1876, after reciting to the effect above recited, and reciting that the Secretary of State for India had, on behalf of Her Majesty the Queen of Great Britain and Empress of India, given his sanction to the cession intended to be thereby effected, the Governor-General in Council, with the sanction aforesaid, did thereby cede and grant to the said Thákur of Bhaunagar, his heirs, and successors, the said scheduled villages, to hold the same unto the said Thákur, his heirs, and successors, on the terms and subject to the rules on and subject to which he holds the said Káthiáwád villages; but it was thereby provided that, in case the said Thákur, his heirs, or successors, should commit any acts of misgovernment which, in the opinion of the Governor-General in Council, rendered it inexpedient that the said Thákur, his heirs, and successors should continue to hold the said scheduled villages, the Governor-General in Council might resume the villages thereby ceded, and re-annex the same to Her Majesty's dominions:

and whereas it is expedient (so far as relates to any past or future proceedings in British India) to ratify the aforesaid acts, proceedings, and sentences of the Thákur of Bhaunagar and the officers and Courts aforesaid, and to indemnify the said Thákur and officers against any liability in respect thereof, and to provide that no title to property shall be disturbed by any act, proceeding, or sentence of any other authority; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bhaunagar Act, 1876:"

Local extent.

It extends only to British India;

Commencement.

And it shall come into force at once.

Scheduled villages excluded from jurisdiction of Bombay Courts.

2. The said scheduled villages shall be deemed to have been, on and after the said first day of February 1866, excluded from the jurisdiction of the Revenue, Civil, and Criminal Courts of the Bombay Presidency.

Validation of acts done after 1st February 1866.

3. All acts of executive authority, proceedings, decrees, and sentences which have been done, taken, or passed subsequently to the first day of February 1866, and which would have been valid if the scheduled villages had been ceded according to the intention of the said agreements and notifications, shall be as valid and operative in British India as if such cession had actually been effected; and no suit or other proceeding shall be maintained or continued against any person whatever on the ground that the scheduled villages did not cease to be British territory on the first day of February 1866.

Bar of suits.

Saving of personal jurisdiction of Courts of British India.

4. Nothing in this Act shall affect any jurisdiction which any Court of justice in British India may, for the time being, be entitled to exercise over persons resident or being beyond the limits of British India.

SCHEDULE.

Bhaunagar Taluqá.

Bhaunagar.
Wadwá.
Ruhá.
Akwárá.
Adhiwárá.
Tarsamia.
Jaspará.
Phulsar.
Karmadiu.
Surká.
Tarak Pálri.
Nári.
Budhel.
Málanka.
Bhutesar.
Bhumli.
Ratanpur Juná.
Ratanpur Nuwá.
Koliak.
Kobri.
Bhuri.
Bhundariu.
Churi.
Sánkrásar.
Bhádole.
Nágdhaniba.
Háthab.
Khadsuliu.
Bhadbadiu.
Alápur.
Thalsar.
Lákhanka.
Sultánpur.
Wávri.
Rámpura.
Bhenswari. } (*waste*).
Jhánjrá. }

Sihór Taluqá.

Sihór.
Usrad.
Agiáli.
Táná.
Bordi.
Kájáwadar.
Ratanpur *near* Táná.
Wadiu.
Waláwad.
Megwadar.
Ghángli.
Nesra.
Chirora (*waste*).
Rájpura.
Khakhriu.
Kardej.
Surká.
Jámbálu.
Kuchotiu (*waste*).

New Villages.

Gundi.
Mándwá.
Sosiá.
Paniáli.
Trápaj.
Bapárá.
Pánchpiplá.
Rájpura.
Khadarpur Mitiverdi.
Pithalpur.
Khántari.
Deogána.
Thordi.

Inám Villages.

Wartej.
Sidhsár.
Sámpura.
Phariádku.
Kálvi (*waste*).
Sodwadra.
Sedhawadar.

Dhanduka Pargana.

Pátna Taluqá.

Pátna.
Bharbir.
Chakampur.
Sarwui.
Jhinjhawadar.
Páti.
Keria *near* Páti.
Bhámbhan.
Samandeála, 2.
Tájpur.
Kánutalao.
Ratanwau.
Keriá.
Jamrála.
Ujalwau.
Jotingra.
Shirthali.
Dhikwáli.
Wajeli.
Lundrá.
Málpur.
Dantretia.
Samandiála.
Kariáni.
Láthidhar.
Weláwadar.
Virdhi *or* Rájghar.
Sajeli.
Oteriá.
Sándherá.
Nágalpur.

Ranpur Pargana.

Botád Taluqá.

Botád.
Hardar.
Sirwániu.
Dánkniá.
Khankoi.
Turkhá.
Kániád.
Rájpura.
Juriá.

Act XXII. of 1876.

ACT XXII. OF 1876.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH DECEMBER 1876.

An Act to provide for the Management of the Public Museum at Calcutta.

Preamble.

WHEREAS, by Act No. XVII. of 1866, reciting that it was expedient to provide for the establishment of a Public Museum at Calcutta, to be called the Indian Museum, it was enacted that the Governor-General in Council should cause to be erected at the expense of the Government of India a suitable building in Calcutta, to be devoted in part to collections illustrative of Indian Archæology and of the several branches of Natural History, in part to the preservation and exhibition of other objects of interest, whether historical, physical, or economical, in part to the records and offices of the Geological Survey of India, and in part to the fit accommodation of the Asiatic Society of Bengal, and to the reception of their library, manuscripts, maps, coins, busts, pictures, engravings, and other property; and it was also enacted that the Government of India should keep the said building in repair, and pay and defray the salaries, allowances, and pensions of the officers and servants, and all other expenses, connected with the said Museum; and by the Act now in recital certain officials and other persons therein mentioned or referred to, to the number of thirteen, and their successors, were constituted a Body Corporate by the name of the Trustees of the Indian Museum, and the said trustees were empowered to receive bequests, donations, and subscriptions, and to deal with the same in the manner therein mentioned for the purposes of their trusts therein mentioned; and it was also enacted that the said trustees should have the exclusive possession, occupation, and control, for the purposes of such trusts, of the said building, other than those portions thereof which, upon its completion, should be set apart by the said trustees for the records and offices of the said Geological Survey and for the accommodation of the said Asiatic Society and the reception of their library, manuscripts, maps, coins, busts, pictures, engravings, and other property; and it was also enacted that all officers and servants, salaried or otherwise, employed in the care or management of the trust-property, should be appointed, and might be removed or suspended, by the said trustees, subject to such regulations and conditions as the said trustees should think proper; and it was also enacted that the Council of the said Asiatic Society should cause the collections belonging to such Society, and illustrative of Indian Archæology and the several branches of Natural History, and all additions that might be made thereto, to be removed to and deposited in the said building at the expense of the Government of India as soon as the same should be completed so far as to be in a condition to receive the said collections, and that an inventory of the articles in such collections should be made by the said Society, one copy whereof was to be signed by the said trustees and kept by the said Society, and another copy was to be signed by the said Society and kept by the said trustees, and that the said Society should continue to have the same exclusive property in and control over their said library, manuscripts, maps, coins, busts, pictures and engravings, which they then possessed, and that the Council of the said Society should have the exclusive possession, occupation, and control, for the purposes of the said Society, of those portions of the said building which should be set apart for the accommodation of the said Society and the reception of their library and other property thereinbefore mentioned;

And whereas the Government of India has caused the said building to be erected, and the Council of the said Society has caused the said collections

belonging to the same Society to be removed to and deposited in the said building at the expense of the Government of India; and an inventory of the articles in such collections has been made by the said Society, one copy whereof has been signed by the said trustees, and delivered to the said Society, and another copy has been signed by the Council of the said Society and delivered to the said trustees;

And whereas the said trustees have, in pursuance of the said Act, set apart certain portions of the said building for the said records and offices of the Geological Survey of India;

And whereas, in consideration of a sum of one hundred and fifty thousand rupees paid to them by the Government of India, the Council of the said Society has relinquished the exclusive possession, occupation, and control secured to them by the said Act, of the portions of the said building which, under the said Act, were to be set apart for the accommodation of the said society and the reception of their said library and other property;

And whereas it is expedient to alter the constitution of the said Body Corporate, and to amend the law relating to the appointment and salaries of the said officers;

And whereas under the circumstances aforesaid it is expedient to repeal the said Act, and to re-enact it with the modifications hereinafter appearing; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Indian Museum Act, 1876."

Repeal of Act No. XVII. of 1866.

2. Act No. XVII. of 1866 (*to provide for the establishment of a Public Museum at Calcutta*) shall be repealed. But all persons nominated under the said Act as trustees of the Indian Museum, and all officers and servants appointed under the same Act and now holding office shall be deemed to have been respectively nominated and appointed under this Act.

Incorporation of the Trustees. *

Constitution and incorporation of the Trustees of the Indian Museum.

3.† The Trustees of the said Indian Museum shall be—

(*a*) the person for the time being holding the office of Accountant-General of Bengal;

(*b*) five other persons to be appointed by the Governor-General in Council;

(*c*) five other persons to be appointed by the Lieutenant-Governor of Bengal;

(*d*) five other persons to be appointed by the Council of the Asiatic Society of Bengal; and

(*e*) five other persons to be appointed by the Trustees;

and the said Trustees shall be a body corporate, by the name of the Trustees of the Indian Museum, and shall have perpetual succession and a common seal.

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* As to powers of trustees to keep collections not belonging to them, and to part with certain property in their possession, see Act IV. of 1887, ss. 5 and 6, Vol. III.

† S. 3 has been substituted by Act IV. of 1887, s. 3.

Act XXII. of 1876.

Number of corporators.

4.* All the powers of the said body corporate may be exercised so long and so often as there are nine members thereof.

Power to appoint new trustees.

5.* If a trustee appointed under section 3 dies, or is absent from the meetings of the trustees for more than twelve consecutive months, or desires to be discharged, or refuses or becomes incapable to act, or becomes Accountant-General of Bengal, then the authority which appointed the trustee may appoint a new trustee in his place.

Powers of the Trustees.

Trustees empowered to receive bequests, donations, and subscriptions.

6. It shall be lawful for the said trustees (*a*) to receive bequests, donations, and subscriptions of land, buildings, money, and any such objects of interest as aforesaid, and (*b*) to hold the same and to lay out such money for the maintenance, improvement, and enlargement of the collections deposited in, presented to, or purchased for, the said Indian Museum, and otherwise for the purposes of the same Museum;

and all such collections shall become the property of the said trustees for the purposes of their trusts herein mentioned;

and the said trustees shall have the exclusive possession, occupation, and control, for the purposes of such trusts, of the whole of the said building, other than those portions thereof which have been set apart by the said trustees for the records and offices of the Geological Survey of India.

Power to trustees to make bye-laws.

7. The said trustees may, from time to time, make bye-laws consistent with this Act—

(*a*) for the management of the said Museum;

(*b*) for the summoning, holding, and adjournment of general and special meetings of the said trustees;

(*c*) for securing their attendance at such meetings;

(*d*) for the provision and keeping of minute-books and account-books;

(*e*) for the compiling of catalogues, and

(*f*) for all other purposes necessary for the execution of their trusts.

Power to trustees to appoint officers and servants.

8. Subject to such regulations and conditions as the trustees think fit, they shall appoint, and may remove or suspend, all officers and servants, salaried or otherwise, employed in the care or management of the trust-property: provided—

(*a*) that no officer be appointed without the approval of the Governor-General in Council if such officer be, at the date of his appointment, in India, or without the approval of the Secretary of State for India in Council if such officer be not then in India;

(*b*) that no new office be created, and no salaries of officers be altered, without the previous sanction of the Governor-General in Council.

Trustees may exchange or sell duplicates.

9. The said trustees may, from time to time, order any duplicates of printed books, medals, coins, specimens of Natural History, or other curiosities deposited in the Indian

* Ss. 4 and 5 have been substituted by Act IV. of 1887, s. 3.

Museum, to be exchanged for manuscripts, books, or other objects of interest, or direct any such duplicates to be sold, and the money to arise from such sale to be laid out in the purchase of manuscripts, books, maps, medals, coins, specimens of Natural History, or other curiosities that may be proper for the said Museum.

10. At all meetings of the said trustees there shall be a quorum for the transaction of business, and for the exercise of any of the powers conferred upon them by this Act.

Quorum.

Duties of the Trustees.

11. The said trustees shall furnish to the Government of India, on or before the first day of December in each year, a report of their several proceedings for the past twelve months, and further shall furnish, on or before the same day in each year, to such Auditor as the Governor-General in Council appoints in this behalf, accounts of all moneys expended by the trustees during the past twelve months supported by the necessary vouchers.

Trustees shall furnish annual reports and accounts.

The said trustees shall cause such report and accounts to be annually published for general information.

12. The said trustees shall cause every article in the said collections belonging to the Asiatic Society, and all additions that may hereafter be made thereto, otherwise than by purchase under section 6, to be marked and numbered, and (subject to the provisions contained in sections 9 and 15) to be kept and preserved in the said Indian Museum with such marks and numbers; and an inventory of such additions shall be made by the said Society, one copy whereof shall be signed by the said trustees and delivered to the said Society, and another copy shall be signed by the Council of the said Society and delivered to the said trustees, and shall be kept by them along with the inventory already delivered to the said trustees as aforesaid.

Collections of Asiatic Society to be kept distinguished in the Museum.

13. All objects taken in exchange under section 9 for, and all moneys payable on sale under the same section of, any of such articles, shall be held on trust, and subject to powers and declarations corresponding as nearly as may be with the trusts, powers, and declarations by this Act limited and declared concerning the same articles.

Articles received in exchange, and moneys paid on sale, to be held on trust.

Miscellaneous.

14. All officers and servants appointed under this Act shall be considered public servants within the meaning of the Indian Penal Code; and so far as regards their salaries, allowances, and pensions, and their leave of absence from duty, they shall be subject to the rules for the time being applicable to uncovenanted civil servants of the Government of India.

Officers under Act to be public servants.

Their salaries, pensions, and leave.

15. In the event of the trust hereby constituted being determined, all collections then in the said Indian Museum, other than those next hereinafter mentioned, shall become the property of the Government of India, and the collections and additions mentioned in section 12 shall become the property of the said Society or their assigns.

In case of determination of trust, Asiatic Society may reclaim their collections.

Act I. of 1877.

ACT I. OF 1877.*

SPECIFIC RELIEF ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH FEBRUARY 1877.

An Act to define and amend the law relating to certain kinds of Specific Relief.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Specific Relief Act, 1877:"

Local extent.

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV. of 1874;

Commencement.

And it shall come into force on the first day of May 1877.

2. [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

'obligation,'

'obligation' includes every duty enforceable by law:

'trust,'

'trust' includes every species of express, implied, or constructive fiduciary ownership:

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* Act I. of 1877 has been extended in its entirety to the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 676.
Western Julpáigurí	Ditto	Dec. 16, 1882, Pt. I., p. 511.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum in the District of Singbhum	Ditto	Feb. 16, 1878 Pt. I., p. 82.
The Jhánsi Division	Ditto	Sep. 26, 1879, Pt. I., p. 592.
The Scheduled Districts of the Panjáb	Ditto	Sep. 22, 1877, Pt. I., p. 562.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 772.
Coorg	Ditto	June 3, 1882, Pt. I., p. 217.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goalpára (excluding the Eastern Duárs), Silhat, and Káchár (excluding the North Káchár Hills)	Ditto	Nov. 10, 1877, Pt. I., p. 662.
The Cantonment of Morár	Ditto	Sep. 7. 1878, Pt. I., p. 559.

Ss. 2 and 9 of the Act have been extended to the taluqs of Bhádráchalam and Rákapilli, and the Rampa Country.—See *Gazette of India*, Oct. 4, 1879, Pt. I., p. 630.

'trustee.' 'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character:

Illustrations.

(*a*.) Z bequeaths land to A, not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life. A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(*b*.) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*.) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*.) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*.) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(*f*.) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*.) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, of C, to the extent of that interest.

'settlement.' 'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of:

Words defined in Contract Act. and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings. **4.** Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of the Indian Registration Act* on documents.

Specific relief how given. **5.** Specific relief is given—

(*a*) by taking possession of certain property, and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

* See Act III. of 1877, s. 2.

Act I. of 1877.

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.—Of Specific Relief.

CHAPTER I.—Of Recovering Possession of Property.

(a.) Possession of Immoveable Property.

Recovery of specific immoveable property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.*

Suit by person dispossessed of immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit,† recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b.) Possession of Moveable Property.

Recovery of specific moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.*

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a.*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

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* See Act XIV. of 1882, s. 3.

† Here certain words, repealed by Act XII. of 1891, have been omitted.

(*b.*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c.*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d.*) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(*e.*) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :—

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations

of clause *a*.—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause *b*.—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause *c*.—A is entitled to a picture by a dead painter and a pair of rare china vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.—Of the Specific Performance of Contracts.

(*a.*) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any contract may, in the discretion of the Court, be enforced—

Cases in which specific performance enforceable.

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(*b*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

Act I. of 1877.

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations

of clause *a*.—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.*

of clause *b*.—A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause *c*.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number, and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause *d*.—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*.) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(*b*.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

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* The first illustration is repealed by Act II. of 1882 (The Indian Trusts Act) as to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam. The said illustration will, when the said Act II. of 1882 is extended to other territories, be repealed in such territories.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is small.

Illustrations.

(*a.*) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed, at the suit of B, to convey to B the 98 bighás, and to make compensation to him for not conveying the two remaining bighás: or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(*b.*) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract, notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit, and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of part of contract where part unperformed is large.

Illustrations.

(*a.*) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(*b.*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract, which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Specific performance of independent part of contract.

Act I. of 1877.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights :—

(*a*) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(*b*) where the concurrence of other persons is necessary to validate the title and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has, in fact, only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee ;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract, and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph:—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform

his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the explanation:—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(*b.*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced:—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,* no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who

* See Act XIV. of 1882, s. 3.

Act I. of 1877. has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations

to *a*.—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest:

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second, both A and B, and in the third A, would be reimbursed by compensation in money.

to *b*.—A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A, and the other by B. A and B each name a valuer, but, before the valuation is made, A instructs his valuer not to proceed:

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease:

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow particular crops on the land in his possession, and deliver them to A when cut and ready for delivery:

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B:

A contracts with B to execute certain works which the Court cannot superintend:

A contracts to supply B with all the goods of a certain class which B may require:

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach:

A contracts to marry B:

The above contracts cannot be specifically enforced.

to *c*.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods, and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to *d*.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership

to *e*.—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

The trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f*.—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g*.—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *h*.—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c.) Of the Discretion of the Court.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

Discretion as to decreeing specific performance.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*.) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Act 1. of 1877.

Illustrations.

(*e.*) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(*f.*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g.*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to be unknown property.

(*h.*) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i.*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(*j.*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k.*) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods; but, if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d.) For whom Contracts may be specifically enforced.

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto;

(*b*) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder; Act I. of 1877.

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversioner is entitled to the benefit of such covenant;

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach;

(*g*) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(*e.*) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy, and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

to clause *a*.—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is, in reality, acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause *b*.—A contracts to sell B a house, and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner; he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause *c*.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Act I. of 1877.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(*b*) who, though he entered into the contract, believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*.) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to perform it.

(*b*.) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*.) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*.) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f.) For whom Contracts cannot be specifically enforced except with a variation.

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation, so set up, in the following cases (namely):—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where, by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a.*) A, B, and C sign a writing, by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b.*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c.*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(*d.*) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e.*) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing; so, with B's consent, A pulls it down, and erects a new house in its place; B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g.*) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations

to clause *b*.—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in

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the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause *c*.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

(*a*) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract, as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations

to clause *c*.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing a Suit for Specific Performance.

Bar of suit for breach after dismissal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) Awards and directions to execute settlements.

Applications of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contract shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.—Of the Rectification of Instruments.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract, or other instrument in writing, does not truly express their intention, either party or his representative in interest may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(*a*.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*.) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

34. A contract in writing may be first rectified, and then, if the plaintiff has so prayed in his plaint, and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.—Of the Rescission of Contracts.

When rescission may be adjudged.

35.* Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:—

(*a*) where the contract is voidable or terminable by the plaintiff;

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* In ss. 35 and 36 the words "in writing" have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

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(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums, which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract either so far as regards the party in default, or altogether as the justice of the case may require.

Illustrations

to *a*.—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to *b*.—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36.* Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.—OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act,† the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

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* In ss. 35 and 36 the words "in writing" have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

† See Act III. of 1877, s. 2.

Illustrations.

(*a.*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b.*) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c.*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act.* B may obtain the cancellation of this lease.

(*d.*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.—Of Declaratory Decrees.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief:

Discretion of Court as to declarations of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a.*) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b.*) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.'

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* See Act III. of 1877, s. 2.

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No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D, took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*c.*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d.*) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(*e.*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's lifetime.

(*f.*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g.*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h.*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

48. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustee, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.—OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties, and liabilities, are regulated by the Code of Civil Procedure.*

CHAPTER VIII.—OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

45. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person

* See Act XIV. of 1882, s. 3.

holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided— Act I. of 1877.

(*a*) that an application for such order be made by some person whose property, franchise, or personal right, would be injured by the forbearing or doing (as the case may be) of the said specific act;

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(*d*) that the applicant has no other specific and adequate legal remedy; and

(*e*) that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize any High Court—

(*f*) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal;

(*g*) to make any order on any other servant of the Crown as such, merely to enforce the satisfaction of a claim upon the Crown; or

(*h*) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made. Procedure thereon.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Order in alternative.

If in the last case the person, Court, or corporation complained of, shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

48 Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

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Power to frame rules.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable to applications and orders under this chapter.

PART III.—OF PREVENTIVE RELIEF.

CHAPTER IX.—OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

53. Temporary injunctions are such as are to continue until a specified time or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.*

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.—OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

* See Act XIV. of 1882, ss. 492-497.

Explanation.—For the purpose of this section, trademark is property. Act I. of 1877.

Illustrations.

(*a.*) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(*b.*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c.*) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d.*) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e.*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f.*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g.*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h.*) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i.*) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j.*) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k.*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l.*) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(*m.*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(*n.*) A, B, and C, are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(*o.*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p.*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

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(*q*.) A, in an administration-suit, to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*x*.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*.) A, by new buildings, obstructs lights, to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV.* B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*.) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B as patient to A, as medical adviser, to be destroyed.

(*d*.) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*.) A threatens to publish statements concerning B, which would be punishable under Chapter XXI. of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(*f*.) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

* See Act XV. of 1877, s. 2.

(*g*.) In the cases put as illustrations (*v*) and (*w*) to section 54, and as illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements, and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract, the performance of which would not be specifically enforced;

(*g*) to prevent, on ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*.) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(*b*.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

Injunction to perform negative agreement.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court

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cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b*.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*.) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*.) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.—(*See section 2.*)

[*Repealed by Act XII. of 1891.*]

ACT II. OF 1877.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1877.

An Act to amend Act No. XIII. of 1875.

Preamble.

WHEREAS it is expedient to define the expression 'High Court' as used in Act No. XIII. of 1875 (*to amend the law relating to Probates and Letters of Administration*), sections 2, 3, and 4; It is hereby enacted as follows:—

'High Court' defined in Act XIII. of 1875, sections 2, 3, and 4.

1. The expression 'High Court' in each of the said sections shall mean, and be deemed to have always meant—

(*a*) a High Court for the time being established under the twenty-fourth and twenty-fifth of Victoria, chapter 104;

(*b*) the Chief Court of the Panjáb;

(*c*) the Court of the Recorder of Rangoon.

Saving of certain grants of probate and administration.

2. Nothing in this Act shall be deemed to affect the validity of any grant of probate or letters of administration with effect throughout the whole of British India heretofore made by any Court other than the Courts specified in section 1.

ACT III. OF 1877.*

INDIAN REGISTRATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1877.

An Act for the Registration of Documents.†

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:—

Preamble.

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Registration Act, 1877:"

Local extent.

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation.‡

Commencement.

And it shall come into force on the first day of April 1877.

Power of Local Government.

The Local Government may, with the previous sanction of the Governor-General in Council, cancel any order excluding districts or tracts of country from the operation of this Act.§

Repeal of enactments.

2. On and from that day Act No. VIII. of 1871 shall be repealed.

But all appointments, notifications, rules, and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established, and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877 to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

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* Act III. of 1877 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has also, under the same Act, been extended to that part of the Khási and Jaintiá Hills District which is comprised within the limits of the Civil Station and Cantonment of Shillong, and declared to be not actually in force in the other parts of the Khási and Jaintiá Hills District, in the Garo Hills, or in the Nágá Hills District.—See *Gazette of India*, Nov. 16, 1878, Pt. I., p. 662.

† Ss. 54 (paras. 2 and 3), 59, 107, and 123 of the Transfer of Property Act (IV. of 1882) shall be read as supplemental to the Indian Registration Act, 1877.—See Transfer of Property Act (IV. of 1882), s. 4.

‡ The whole of the Scheduled Districts of the Madras Presidency have been excluded from the operation of the Act.—See *Fort St. George Gazette*, Oct. 4, 1881, Pt. I., p. 516.

§ The last para. of s. 1 has been added by Act XII. of 1891.

Act III. of 1877.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease" includes a counterpart, kabuliyat, and undertaking to cultivate or occupy, and an agreement to lease:

"Signature" and "signed" include and apply to the affixing of a mark:

"Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass:

"Moveable property" includes standing timber, growing crops, and grass, fruit upon and juice in trees, and property of every other description, except immoveable property:

"Book" includes a portion of a book, and also any number of sheets connected together with a view of forming a book or portion of a book;

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority:*

"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot:

"Addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and, in the case of a native, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name:

"District Court" includes the High Court in its ordinary original civil jurisdiction: and

"District" and "sub-district" respectively mean a district and sub-district formed under this Act.

PART II.—Of the Registration-establishment.

Inspector-General of Registration.

4. The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

Branch Inspector-General of Sindh.

The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

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* See Act IX. of 1875.

Any Inspector-General or the Branch Inspector-General of Sindh may hold simultaneously any other office under Government. Act III. of 1877.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

Districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper to be registrars of the several districts, and to be sub-registrars of the several sub-districts, formed as aforesaid, respectively.

Registrars and sub-registrars.

7. The Local Government shall establish in every district an office to be styled the office of the registrar, and in every sub-district an office or offices to be styled the office of the sub-registrar, or the offices of the joint sub-registrars, and may amalgamate with any office of a registrar any office of a sub-registrar subordinate to such registrar,

Offices of registrar and sub-registrar.

and may authorize any sub-registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the registrar to whom he is subordinate:

Provided that no such authorization shall enable a sub-registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called inspectors of registration-offices, and may from time to time prescribe the duties of such officers. Every such inspector shall be subordinate to the Inspector-General.

Inspectors of registration-offices.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the sub-registrar or the registrar of such sub-district or district, as the case may be.*

Military cantonments may be declared sub-districts or districts.

10. Whenever any registrar, other than the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

Absence of registrar from his district or vacancy in his office.

any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the registrar's office is situate,

shall be the registrar during such absence, or until the Local Government fills up the vacancy.

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* The second paragraph of s. 9 has been omitted, as it has been repealed by the Cantonments Act (XIII, of 1889), s. 2 and Sch.

Act III. of 1877.

Whenever the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the registrar during such absence, or until the Local Government fills up the vacancy.

Absence of registrar on duty in his district.

11. Whenever any registrar is absent from his office on duty in his district he may appoint any sub-registrar or other person in his district to perform, during such absence, all the duties of a registrar, except those mentioned in sections 68 and 72.

Absence of sub-registrar or vacancy in his office.

12. Whenever any sub-registrar is absent, or when his office is temporarily vacant, any person whom the registrar of the district appoints in this behalf shall be sub-registrar during such absence, or until the Local Government fills up the vacancy.

Appointments under section 10, 11, or 12, to be reported to Government.

13. All appointments made under section 10, section 11, or section 12 shall be reported to the Local Government by the Inspector-General. Such report shall be either special or general as the Local Government directs.

Suspension, removal, and dismissal of officers.

The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration and establishments of registering officers.

14 Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act.

Seals of registering officers.

15. The several registrars and sub-registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs: "The seal of the registrar (*or* of the sub-registrar) of ."

Register-books.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Forms.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Fire-proof boxes.

The Local Government shall supply the office of every registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.—Of Registrable Documents.

Documents of which registration is compulsory.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the

date on which Act No. XVI. of 1864, * or Act No. XX. of 1866, † or Act No. VIII. of 1871, ‡ or this Act, came or comes into force (that is to say),— Act III. of 1877.

(*a*) instruments of gift of immoveable property;

(*b*) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(*c*) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest; and

(*d*) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent:

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Exception of composition-deeds; and of transfers of shares and debentures in land companies;

Nothing in clauses (*b*) and (*c*) of this section applies to—

(*e*) any composition-deed;

(*f*) any instrument relating to shares in a joint-stock company, notwithstanding that the assets of such company consist in whole or in part of immoveable property; or

(*f*) any debenture issued by any such company, and not creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in immoveable property, except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the company has mortgaged, conveyed, or otherwise transferred the whole or part of its immoveable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures; or §

(*g*) any endorsement upon or transfer of any debenture issued by any such company;

(*h*) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest; documents merely creating right to obtain other documents.

(*i*) decrees and orders of Courts and awards;

(*j*) grants of immoveable property by Government;

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* Repealed by Act XX. of 1866, s. 3.
† Repealed by Act VIII. of 1871, s. 2.
‡ Repealed by this Act, s. 2.
§ New clause inserted by Act VII. of 1886, s. 2.

Act III. of 1877.

(*k*) instruments of partition made by revenue-officers;

(*l*) certificates and instruments of collateral security granted under the Land Improvement Act, 1871;*

(*m*) orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act; †

(*n*) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage. ‡

(*o*) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer. §

Authorities to adopt.

Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered. ‖

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(*a*) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

(*b*) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest;

(*c*) leases of immoveable property for any term not exceeding one year and leases exempted under section 17;

(*d*) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property;

(*e*) wills;

(*f*) all other documents not required by section 17 to be registered.

Documents in language not understood by registering officer.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

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* In this clause, for the word "certificates" the words "orders granting loans" shall be substituted in those parts of British India in which the Land Improvement Loans Act (XIX. of 1883) is in force.—See s. 12, Act XIX. of 1883.

† New clause, added by Act VII. of 1886, s. 3.

‡ New clause, added by Act VII. of 1886, s. 4.

§ New clause, added by Act VII. of 1888, s. 65.

‖ Also, memoranda appointing new trustees under the Religious Societies Act.—See Act I. of 1880, s. 3.

Documents containing interlineations, blanks, erasures, or alterations.

20. The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration. Act III of 1877.

Description of parcels.

21. (*a*) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(*b*) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

Documents containing maps or plans.

(*c*) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Failure to comply with rules as to description of houses and land.

22. Failure to comply with the provisions contained in section 21, clause (*b*), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.—Of the Time of Presentation.

Time for presenting documents.

23. Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision where delay in presentation is unavoidable.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Act III of 1877.

Any application for such direction may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

Documents executed out of British India.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(*a*) that the instrument was so executed, and

(*b*) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Provision where office is closed on last day of period for presentation.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.—Of the Place of Registration.

Place for registering documents relating to land.

28. Save as in this part otherwise provided, every document mentioned in section 17, clauses (*a*), (*b*), (*c*), and (*d*), and section 18, clauses (*a*), (*b*), and (*c*), shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

29. Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the sub-registrar in whose sub-district the document was executed, or in the office of any other sub-registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the sub-registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other sub-registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration by registrar.

30. (*a*) Any registrar may, in his discretion, receive and register any document which might be registered by any sub-registrar subordinate to him.

Registration by registrar at presidency-town and Lahore.

(*b*) The registrar of a district including a presidency-town and the registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit. Act III of 1877.

Registration or acceptance for deposit at private residence.

But such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such will.

PART VI.—Of Presenting Documents for Registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

Persons to present documents for registration.

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative, or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

Powers-of-attorney recognizable for purposes of section 32.

(*a*) if the principal, at the time of executing the power-of-attorney, resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the registrar or sub-registrar within whose district or sub-district the principal resides :

(*b*) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(*c*) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (*a*) and (*b*) of this section :—

Proviso as to persons infirm or in jail, or exempt from appearing in Court.

persons who, by reason of bodily infirmity, are unable, without risk or serious inconvenience, so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

In every such case the registrar or sub-registrar or magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

Act III. of 1877.

To obtain evidence as to the voluntary nature of the execution, the registrar or sub-registrar or magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed [redacted] authenticated by, the person or Court hereinbefore mentioned in [redacted].

Enquiry before registration by registering officer.

34. Subject to the provisions contained in this part and in sections 41, 43, 45, 69, 75, 77, 88, and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26:

Provided that, if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine, not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(*b*) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document, and,

(*c*) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

Procedure on admission of execution.

35. If all the persons executing the document appear personally before the registering officer, and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

or, in the case of any person appearing by a representative, assign, or agent, if such representative, assign, or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

Procedure on denial of execution, &c.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to the registering officer* to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing, or dead:† Provided that, where such officer is a registrar, he shall follow the procedure prescribed in Part XII. of this Act.

PART VII.—Of Enforcing the Appearance of Executants and Witnesses.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent as in the summons may be mentioned, and at a time named therein.

Officer or Court to issue and cause service of summons.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

38. A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration-office,

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Law as to summonses, commissions, and witnesses.

39. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and, *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear, under the provisions of this Act.

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* The words "to the registering officer" have been added by Act XII. of 1879, s. 104.

† The words "as to the person so denying, appearing, or dead" have been added by the same Act and section.

PART VIII.—Of Presenting Wills and Authorities to Adopt.

Persons entitled to present wills and authorities to adopt.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any registrar or sub-registrar for registration,

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for registration.

Registration of wills and authorities to adopt.

41. A will or an authority to adopt presented for registration by the testator or donor may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(*a*) that the will or authority was executed by the testator or donor, as the case may be;

(*b*) that the testator or donor is dead; and

(*c*) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.—Of the Deposit of Wills.

Deposit of wills.

42. Any testator may, either personally or by duly-authorized agent, deposit with any registrar his will in a sealed cover, superscribed with the name of the testator and that of his agent (if any), and with a statement of the nature of the document.

Procedure on deposit of wills.

43. On receiving such cover, the registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note, in the same book and on the said cover, the year, month, day, and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal of sealed cover deposited under section 42.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly-authorized agent to the registrar who holds it in deposit, and such registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Proceedings on death of depositor.

45. If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the registrar who holds it in deposit to open the same, and if the registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense; cause the contents thereof to be copied into his Book No. 3.

Re-deposit.

When such copy has been made, the registrar shall re-deposit the original will.

Saving of Act X. of 1865, section 259.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid. Act III. of 1877.

PART X.—OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from which registered document operates.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Registered documents relating to property when to take effect against oral agreements.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered—

shall affect any immoveable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

50. Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*), and (*d*) of section 17, and clauses (*a*) and (*b*) of section 18, shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (*e*), (*f*), (*ff*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), and (*o*), of the same section.*

Explanation.—In cases where Act No. XVI. of 1864† or Act No. XX. of 1866‡ was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under Act No. VIII. of 1871§ or this Act.

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* As amended by Act VII. of 1886, s. 5, and Act VII. of 1888, s. 65.
† Repealed by Act XX. of 1866, s. 3.
‡ Repealed by Act VIII. of 1871, s. 2.
§ Repealed by this Act, s. 2.

Act III. of 1877.

PART XI.—Of the Duties and Powers of Registering Officers.

(*A*) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. The following books shall be kept in the several offices hereinafter named (that is to say),—

In all registration-offices—

Book 1, "Register of non-testamentary documents relating to immoveable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous register."

In the offices of registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 89,* which relate to immoveable property and are not wills.

In Book 4 shall be entered all documents registered under clauses (*d*) and (*f*) of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the registrar has been amalgamated with the office of a sub-registrar.

Endorsements on document presented.

52. The day, hour, and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

Receipt for document.

Documents admitted to registration to be copied.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

Entries to be numbered consecutively.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current indexes and entries therein.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

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* The figures 89 have been substituted for 87 by Act XII. of 1879, s. 105.

55. Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I., Index No. II., Index No. III., and Index No. IV.

Indexes to be made by registering officers.

Index No. I. shall contain the names and additions of all persons executing, and of all persons claiming under, every document entered, or memorandum filed, in Book No. 1.

Index No. II. shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

Index No. III. shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and, after the death of the testator or the donor (but not before), the names and additions of all persons claiming under the same.

Index No. IV. shall contain the names and additions of all persons executing, and of all persons claiming under, every document entered in Book No. 4.

Indexes Nos. I., II., III., and IV. shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

Extra particulars in Indexes.

56. Every sub-registrar shall send to the registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such sub-registrar, during the last of such intervals, in Indexes Nos. I., II., and III.

Copy of entries in Indexes Nos. I., II., and III. to be sent by sub-registrar to registrar.

Every registrar receiving such copy shall file it in his office.

Such copy to be filed by registrar.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2, and the Indexes relating to Book No. 1, shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

Subject to the same provisions, copies of entries in Book No. 3, and in the Index relating thereto, shall be given to the persons executing the documents to which such entries relate, or to their agents, and, after the death of the executants (but not before), to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4, and in the Index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

Act III. of 1877.

(B) As to the Procedure on admitting to Registration.

58. On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89,* there shall be endorsed from time to time the following particulars (that is to say),—

Particulars to be endorsed on documents admitted to registration.

(*a*) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(*b*) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(*c*) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall, at the same time, endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document, and made in his presence on the same day.

Such endorsements to be dated and signed by registering officer.

60. After such of the provisions of sections 34, 35, 58, and 59, as apply to any document presented for registration, have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Certificate showing that document has been registered, and number and page of book in which it has been copied.

Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Endorsements and certificate to be copied.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Document to be returned.

62. When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

Procedure on presenting document in language unknown to registering officer.

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* As amended by Acts XIX. of 1883 and VII. of 1886.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original. Act III. of 1877.

63. Every registering officer may, at his discretion, administer an oath to any person examined by him under the provisions of this Act.

Power to administer oaths.

He may also, at his discretion, record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

Record of substance of statements.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) Special Duties of Sub-Registrar.

64. Every sub-registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate, and such sub-registrar shall file the memorandum in his Book No. 1.

Procedure on registration of document relating to land situate in several sub-districts.

65. Every sub-registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

Procedure where document relates to land situate in several districts.

The registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the sub-registrars subordinate to him within whose sub-district any part of such property is situate; and every sub-registrar receiving such memorandum shall file it in his Book No. 1.

(D) Special Duties of Registrar.

66. On registering any non-testamentary document relating to immoveable property, the registrar shall forward a memorandum of such document to each sub-registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure on registering documents relating to land.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other registrar in whose district any part of such property is situate.

Such registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the sub-registrars subordinate to him within whose sub-district any part of the property is situate.

Every sub-registrar receiving any memorandum under this section shall file it in his Book No. 1.

Act III. of 1877.

67. On any document being registered under section 30, clause (*b*), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every registrar within whose district any part of the property to which the instrument relates is situate, and the registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

Procedure on registration under section 30, clause (*b*).

(E) Of the Controlling Powers of Registrars and Inspectors-General.

68. Every sub-registrar shall perform the duties of his office under the superintendence and control of the registrar in whose district the office of such sub-registrar is situate.

Registrar to superintend and control sub-registrars.

Every registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any sub-registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69. The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

Inspector-General to superintend registration-offices. His power to make rules.

providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each district;

declaring what territorial division shall be recognized under section 21;

regulating the amount of fines imposed under sections 24 and 34, respectively;

regulating the exercise of the discretion reposed in the registering officer by section 63;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by registrars and sub-registrars of the books kept in their respective offices under section 51;

declaring the particulars to be contained in Indexes Nos. I., II., III., and IV., respectively;

declaring the holidays that shall be observed in the registration-offices;

and, generally, regulating the proceedings of the registrars and sub-registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and shall then have the same force as if they were inserted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit, wholly or in part, the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

His power to remit fines.

PART XII.—OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded.

71. Every sub-registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal, and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed, unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Power to reverse or alter orders of sub-registrar refusing registration on ground other than denial of execution.

72. Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a sub-registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the registrar to whom such sub-registrar is subordinate, if presented to such registrar within thirty days from the date of the order; and the registrar may reverse or alter such order;

and, if the order of the registrar directs the document to be registered, and the document is duly presented for registration within thirty days after the making of such order, the sub-registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where sub-registrar refuses to register on ground of denial of execution.

73. When a sub-registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the registrar to whom such sub-registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing, and shall be accompanied by a copy of the reasons recorded under section 71; and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Procedure of registrar on such application.

74. In such case, and also where such denial as aforesaid is made before a registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

(*a*) whether the document has been executed;

(*b*) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Act III. of 1877.

Order to register, and procedure thereon.

75. If the registrar finds that the document has been executed, and that the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.*

Refusal by registrar.

76. Every registrar refusing—

(*a*) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a sub-registrar, or

(*b*) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

Suit in case of refusal.

77. Where the registrar refuses to order the document to be registered under section 72 or section 76, any person claiming under such document, or his representative, assign, or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.—Of the Fees for Registration, Searches, and Copies.

Fees to be fixed by Local Government.

78. Subject to the approval of the Governor-General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents:

for searching the registers:

* See Act XIV. of 1882, s. 3.

for making or granting copies of reasons, entries, or documents, before, on, or after registration : Act III. of 1877.

and of extra or additional fees payable—

for every registration under section 30 :

for the issue of commissions :

for filing translations :

for attending at private residences :

for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

Publication of fees.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.—Of Penalties.

81. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for incorrectly endorsing, copying, translating, or registering documents with intent to injure.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

Penalty for certain other offences.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;

Making false statements before registering officer.

(*b*) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

Delivering false copy or translation.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ;

False personation.

Act III. of 1877.

Abetment of offences under this Act.

(*d*) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Registering officer may commence prosecutions.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the registrar, or the sub-registrar in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a "Magistrate of the second class:"*

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered "in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."†

Registering officers to be deemed public servants.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.‡

PART XV.—MISCELLANEOUS.

Destruction of unclaimed documents.

85. Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bonâ fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

Nothing so done invalidated by defect in appointment or procedure.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Registration of documents executed by Government officers or certain public functionaries.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

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* The words "Magistrate of the second class" have been substituted for the words, "Subordinate Magistrate of the first class," by Act XII. of 1879, s. 106.

† The words quoted have been substituted by Act XII. of 1891.

‡ The third paragraph of s. 84, being repealed by Act XII. of 1891, has been omitted.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument. Act III. of 1877.

89. Every officer granting a certificate* under the Land Improvement Act, 1871, shall send a copy of such certificate* to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted, as collateral security, is situate, and such registering officer shall file the copy† in his Book No. 1.

Certificates under Land Improvement Act, 1871.

Every Court granting a certificate under section 316 of the Code of Civil Procedure‡ shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.§

Every officer granting a loan under the Agriculturists Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.‖

Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.¶

Exemptions from Act.

90. Nothing contained in this Act, or in Act No. VIII. of 1871,** or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

Exemption of certain documents executed by or in favour of Government.

(*a.*) Documents issued, received, or attested, by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement ;

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* In this clause, for the words "a certificate," the words "a loan," and, for the words "such certificate," the words "his order," shall be substituted in those parts of British India in which the Land Improvement Act (XIX. of 1883) is in force.—See s. 12, Act XIX. of 1883.

† The word "copy" has been substituted for the word "certificate" by Act XII. of 1879, s. 107.

‡ See Act XIV. of 1882, s. 3.

§ This clause has been added by Act XII. of 1879, s. 107.

‖ New paragraph added by Act VII. of 1886, s. 3.

¶ In s. 89, the last paragraph has been added by Act XII. of 1891.

** Repealed by this Act, s. 2.

Act IV. of 1877.

(*b.*) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey;

(*c.*) Documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwáris or other officers charged with the preparation of village-records;

(*d.*) Sanads, inám title-deeds, and other documents purporting to be, or to evidence, grants, or assignments by Government of land or of any interest in land;

(*e.*) Notices given under section 74 or section 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land.*

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses (*a*), (*b*), (*c*), and (*e*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.†

Burmese registration rules confirmed.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

ACT IV. OF 1877.

THE PRESIDENCY MAGISTRATES ACT.

An Act to regulate the Procedure, and increase the Jurisdiction, of the Courts of Magistrates in the Presidency-towns.‡

1 to **56**. [*Repealed by Act X. of 1882.*]

Fees for summonses and warrants.

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas:

Power to remit fees.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

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* New clause added by Act VII. of 1886, s. 6.

† As amended by Act VII. of 1886, s. 6.

‡ The whole Act, except s. 57, has been repealed by Act X. of 1882 (Criminal Procedure Code).

ACT XI. OF 1877.*

Act XI of 1877.

THE MILITARY LUNATICS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 31ST MAY 1877.

An Act to facilitate the Admission of Military Lunatics into Asylums.

WHEREAS it is expedient to facilitate the admission of European Military Lunatics into Asylums, and to amend the law now in force with regard to the admission thereto of Native Military Lunatics; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Military Lunatics Act, 1877:"

Local extent.

It extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force on the passing thereof.

2. [*Repealed by Act XII. of 1891, Sch. I.*]

Procedure in respect of European officer or soldier declared lunatic.

3. Whenever any European officer, warrant-officer, non-commissioned officer, soldier, or other person subject to the provisions of the ~~Act,~~† ~~for punishing mutiny and desertion and for the better payment of the Army and their quarters, for the time being in force~~, has been declared a lunatic in accordance with the provisions of the military regulations ~~of the Presidency to which he belongs~~, and has been ordered to be forwarded to any one of the Presidency-towns, and it appears to ~~one of the Surgeons-General either of the British forces or of the~~ Indian Medical service, ~~according to the Presidency and the service to which the~~ said lunatic belongs, that it is inexpedient that he should be removed to England, or that he should be detained in military custody until he can be conveniently sent to England, ~~such Surgeon-General~~ may, if he think fit, make an order under his hand for the reception of the said lunatic into the Lunatic Asylum at Bhowanipur, Madras, or Bombay, or such other Lunatic Asylum as may be duly authorized for the purpose by the Governor-General in Council;

and the officer in charge of such asylum shall receive the lunatic in the asylum, and detain him therein until he is discharged therefrom, in accordance with the ~~local~~ military regulations in force for the time being, or until ~~the Surgeon-General~~ applies for his transfer to the military authorities in view to his removal to England.

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* Act XI. of 1877 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Part I., p. 504.

† See now the Army Act, 1881 (44 and 45 Vic., c. 58), as amended by subsequent Annual Army Acts, 1882, 1883, and 1884 (45 Vic., c. 7; 46 Vic., c. 6; and 47 Vic., c. 8).

Act XI. of 1877.

Report in case of native officer or soldier appearing to be insane.

4. Whenever any native officer, non-commissioned officer, or soldier appears to be insane, the officer commanding the regiment or detachment to which he belongs shall report the case to the General Officer commanding the division or district or force in which such regiment or detachment is serving.

Examination of native by committee.

5. Such General Officer shall thereupon cause the said native to be examined by a committee composed of at least two medical officers, or (if this be impracticable) by a regimental committee comprising the officer in command of the wing or squadron to which the native belongs, and the medical officer in charge of the corps or detachment of which such wing or squadron forms part.

Procedure on native being found by committee to be insane.

6. If the said committee or regimental committee (as the case may be) are satisfied that the native is insane, the officer commanding the division or district or force may, if he thinks fit, make an order under his hand for the reception of the said native into a Lunatic Asylum, and shall then send him thither under military escort; and the officer in charge of such asylum shall receive the native into the asylum, and detain him therein until he is discharged therefrom in accordance with the ~~local~~ military regulations in force for the time being.

Procedure for discharge of European or native military lunatic.

7. Whenever it appears to the officer in charge of a Lunatic Asylum that the discharge of a military lunatic, whether European or native, is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General Officer commanding the division, district, or force, or other officer authorized to order the admission of military lunatics into asylums, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the ~~local~~ military regulations in force for the time being.

Payment of expenses of lunatic.

8. The paymaster of the military circle within which any such asylum is situate shall pay to the officer in charge of such asylum the expense of the lodging, maintenance, clothing, and medicine of every lunatic, whether European or native, received and detained under this Act.

9. [*Repealed by Act XII. of 1891, Sch. I.*]

ACT XIII. OF 1877.

Act XIII. of 1877.

THE BURMA EMBANKMENT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH JUNE 1877.

An Act to provide for the Execution of Works urgently required in connection with Embankments in Lower Burma.

Preamble.

WHEREAS it is expedient to provide for the execution of works urgently required in connection with embankments in Lower Burma; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Burma Embankment Act, 1877:"

Local extent.

It extends to all the territories* for the time being under the administration of the Chief Commissioner of Lower Burma;*

Commencement.

And it shall come into force on the passing thereof.

Interpretation-clause.

2. In this Act—

"Embankment" means any embankment constructed for the purpose of excluding, regulating, or retaining water, and includes all earthen walls, dams, canals, drains, piers, groins, sluices, buildings, water-gauges, bench-marks, and other works subsidiary to any such embankment; and

"Embankment-officer," used with reference to an embankment, means the officer appointed by the Chief Commissioner by notification in the *Burma Gazette*, to carry out this Act in respect of such embankment.

Circumstances under which this Act may be put in operation.

3. Whenever the embankment-officer has reason to believe that, unless some work is quickly executed in connection with an embankment, loss of life or extensive damage to property will ensue, and that the labourers or materials required for the execution of such work cannot be obtained in the ordinary course in time to enable him to execute such work with the expedition necessary in order to avert such loss or damage, he may, by order under his hand, direct that the provisions of this Act shall be put into operation for the execution of such work; and thereupon

Power to impress labour.

(*a*) every able-bodied person who resides in the neighbourhood of such embankment, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or any person authorized by him in this behalf may direct; and

Power to take materials.

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the said neighbourhood, and take possession of, appropriate, and remove any trees or bamboos, whether standing or not, and any timber,

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* The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). And the Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th idem, Pt. I., p. 539.

Act XIII. of 1877.

mats, rope, or other materials found in or upon such property, and use the same for the purposes of such work.

List of labourers.

4. Subject to such rules as the Local Government may, from time to time, with the previous sanction of the Governor-General in Council, prescribe in this behalf, the Deputy Commissioner shall prepare a list of the persons liable to be required, under section 3, clause (*a*), to assist as aforesaid, and may, from time to time, add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

5. All persons labouring, or detained for the purpose of labouring, in compliance with a requisition made under section 3, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by t bankment-officer for their labour and detention, or for such materials case may be), at such rates, not being less than the highest market-r similar labour or materials for the time being prevailing in the said nei hood, as the Chief Commissioner may, from time to time, by writte direct.

Compensation for damage done in taking materials.

6. When, from the removal of any trees, bamboos, or other under section 3, any damage, over and a price payable for such materials under results directly to any person, the emba officer shall pay to such person such sum as may be agreed upon pensation for such damage, or, in case of dispute as to the amou be paid, as the Deputy Commissioner of the district may award, sub such rules, as to appeal or otherwise, as the Chief Commissioner may time to time, prescribe in this behalf.

Penalties for trespass on embankments, &c.

7. Where, an embankment-officer has been appointed for any emb ment, any person who, without the permissio such officer—

(*a*) grazes any cattle or allows any cattle under his charge to tresp on such embankment, or

(*b*) cuts or roots out any trees, shrubs, or grass growing on such em bankment, or

(*c*) obstructs any drain or sluice connected with such embankment,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation.—In this section, clause (*a*), "cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids.

Certain persons to be deemed public servants.

8. Every embankment-officer, and every person authorized by an embankment-officer to act under section 3, shall be deemed to be a "public servant" within the meaning of the Indian Penal Code.*

* The rest of s. 8, repealed by Act XI. of 1889, s. 2 (*1*), has here been omitted.

ACT XIV. OF 1877.

Act XIV. of 1877.

THE BROACH AND KAIRA INCUMBERED ESTATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH JUNE 1877.

An Act to relieve from Incumbrances the Estates of Thakurs in Broach and Kaira.

1—38. [*Repealed by Act XXI. of 1881.*]

39. ~~And~~ whereas doubts have been raised as to the validity of Bombay Act No. VI. of 1862 (*for the amelioration of the condition of taluqdárs in the Ahmadabad Collectorate, and for their relief from debt*), so far as it purports to affect the High Court of Judicature at Bombay, for the purpose of precluding such doubts, it is hereby ~~further~~ enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

Amendment of Bombay Act VI. of 1862.

40. "The Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7," * for the time being shall, unles the Local Government in any case otherwise directs, be—

Taluqdári Settlement-officer to be—

(*a*) deemed to be an officer appointed under section 1 of the said Bombay Act No. VI. of 1862, to manage all estates with respect to which a declaration is or has been made and published under the said section;

deemed officer under Bombay Act VI. of 1862, section 1;

(*b*) an assistant to the respective Collectors of Ahmadabad, Kaira, and Broach.

assistant to certain Collectors.

41. Nothing heretofere done by any Taluqdári Settlement-officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed,

Acts of Taluqdári Settlement-officer valid.

(*a*) under section 1 of the said Bombay Act No. VI. of 1862, to manage any estates with respect to which a declaration has been made under the said section, or

(*b*) to be a manager under the said Act No. XV. of 1871,† or

(*c*) to be an assistant to the respective Collectors of Ahmadabad, Kaira, and Broach.

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* The words quoted have been substituted for the words, "the said Taluqdári Settlement-officer," by Act XXI. of 1881, s. 2.

† Repealed by this Act.

Act XV. of 1877.

ACT XV. OF 1877.*

INDIAN LIMITATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH JULY 1877.

An Act for the Limitation of Suits, and for other Purposes.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals, and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Limitation Act, 1877."

Extent of Act.

It extends to the whole of British India; but nothing contained in sections 2 and 3 or in Parts II. and III. applies—

(*a*) to suits under the Indian Divorce Act, or

(*b*) to suits under Madras Regulation VI. of 1831.

Commencement.

And it shall come into force on the first day of October 1877.

References to Act IX. of 1871.
Saving of titles already acquired.
Saving of Act IX. of 1872, section 25.

2.† All references to the Indian Limitation Act, 1871,‡ shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.§

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom

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* Act XV. of 1877 has been declared in force in Upper Burma generally (except the Shan States) by Act XX. of 1886, s. 6; in British Baluchistan, by Reg. I. of 1890, s. 3; in the Santhál Parganas, by Reg. III. of 1872 as amended by Reg. III. of 1886, s. 6; and in the District of Hazára, by Reg. II. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Part I., p. 504.

† Certain words, repealed by Act XII. of 1891, have here been omitted. Those words originally formed the first para. of s. 2.

‡ Repealed by this Act.—See First Schedule.

§ The third para. of s. 2, as originally enacted, has been repealed by Act XII. of 1891, and has therefore been omitted.

an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued: Act XV. of 1877.

'easement'* includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another:

'bill of exchange' includes also a hundi and a cheque:

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

'trustee' does not include a benámídár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'suit' does not include an appeal or an application:

'registered' means duly registered in British India under the law† for the registration of documents in force at the time and place of executing the document, or signing the decree or order referred to in the context:

'foreign country' means any country other than British India:

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

Dismissal of suits, &c., instituted, &c., after period of limitation.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and, in the case of a claim against a Company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(*a.*) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(*b.*) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

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* The definition of "easement" is repealed in Madras, the Central Provinces, Coorg, Bombay, the North-Western Provinces, and Oudh. — See Act V. of 1882, s. 3, and Act VIII. of 1891.

† See Act III. of 1877.

Act XV. of 1877.

5.* If the period of limitation prescribed for any suit, appeal, or application, expires on a day when the Court is closed, the suit, appeal, or application may be instituted, presented, or made on the day that the Court re-opens.

Proviso where Court is closed when period expires.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Proviso as to appeals and applications for review.

5A.† Whenever it is shown to the satisfaction of the Court that an appeal or an application for a review of judgment was presented after the expiration of the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice, or judgment of the High Court of the Presidency, Province, or District, such appeal or application, if otherwise in accordance with law, shall, for all purposes, be deemed by all Courts to have been presented within the period of limitation prescribed therefor.

Limitation for certain appeals or applications for review of judgment.

6. When, by any special or local law‡ now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal, or application, nothing herein contained shall affect or alter the period so prescribed.

Special and local laws of limitation.

7.§ If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Legal disability.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

Double and successive disabilities.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Disability of representative.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years, from the cessation of the

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* The provisions of s. 5 applicable to appeals apply to applications under ss. 365, 366, 368, and 371 of the Code of Civil Procedure.—See Act XIV. of 1882, s. 372A, added by Act VII. of 1888, s. 32 (*4*).

† S. 5A has been added by Act VI. of 1892, s. 1. Act VI. of 1892 applies to every appeal and review of judgment heard after the passing thereof, notwithstanding that the judgment appealed from or under review may have been passed, or the petition of appeal or application for review presented, before the passing of the Act.—See s. 5 of the Act.

‡ See lists of some of these laws on pages 198 and 213.

§ Ss. 7, 8, and 9, do not apply to certain suits and applications under the Bengal Tenancy Act, 1885.—See s. 185 of that Act.

disability or the death of the person affected thereby, the period within which any suit must be instituted or application made. Act XV. of 1877.

Illustrations.

(*a.*) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(*b.*) A. to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority within which he may bring his suit.

(*c.*) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(*d.*) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(*e.*) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(*f.*) A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Disability of one joint creditor.

8.* When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(*a.*) A incurs a debt to a firm, of which B, C, and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C, and D.

(*b.*) A incurs a debt to a firm, of which E, F, and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Continuous running of time.

9.* When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and their representatives.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the pur-

* Ss. 7, 8, and 9, do not apply to certain suits and applications under the Bengal Tenancy Act, 1885.—See s. 185 of that Act.

Act XV. of 1877. pose of following in his or their hands such property, shall be barred by any length of time.

Suits on foreign contracts.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign limitation law.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of day on which right to sue accrues.

12. In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.

Exclusion in case of appeals and certain applications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

Exclusion of time of proceeding *bonâ fide* in Court without jurisdiction.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Like exclusion in case of order under Civil Procedure Code, section 20.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20,* the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted shall be excluded.

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* This reference to Act X. of 1877, s. 20, should now be read as applying to Act XIV. of 1882, s. 20.—See s. 3 of the latter Act.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction or other cause of a like nature, is unable to grant it.

Like exclusion in case of application.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which commencement of suit is stayed by injunction or order.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

17. When a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person, having a right to institute a suit or make an application, has, by means of fraud, been kept from the knowledge of such right, or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed docu-

Act XV. of 1877.

ment, when he first had the means of producing it, or compelling its production.

Effect of acknowledgment in writing.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation according to the nature of the original liability shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section "signed" means signed either personally or by an agent* duly authorized in this behalf.

Effect of payment of interest as such.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of part-payment of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt

Effect of receipt of produce of mortgaged land.

of the produce of such land shall be deemed to be a payment for the purpose of this section.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

Effect of substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

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* See 19 and 20 Vic., c. 97, s. 13.

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff:

Proviso where original defendant dies.

Provided also that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Continuing breaches and wrongs.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action, unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(*a.*) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(*b.*) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(*a.*) A Hindu makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(*b.*) A Hindu makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition of right to easements.

26.* Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative), has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

* Ss. 26 and 27 are repealed in Madras, the Central Provinces, Coorg, Bombay, the North-Western Provinces, and Oudh.—See Act V. of 1882, s. 3, and Act VIII. of 1891.

Act XV. of 1877.

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment, by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.*

Illustrations.

(*a*.) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(*b*.) In a like suit, also brought in 1881, the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(*c*.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

27.† Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived, has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.‡

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C, a Hindu widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.§

THE FIRST SCHEDULE.

(See section 2.)

[*Repealed by Act XII. of 1891.*]

* See 2 and 3 Wm. IV., c. 71, ss. 2, 3, and 4.
† See foot-note to s. 26 in the previous page.
‡ See 2 and 3 Wm. IV., c. 71, s. 8.
§ See 3 and 4 Wm. IV., c. 27, s. 34.

THE SECOND SCHEDULE.

(See section 4.)

*First Division: Suits.**

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part I.—Thirty days.	
1.—To contest an award of the Board of Revenue under Act No. XXIII. of 1863 (*to provide for the adjudication of claims to waste lands*).	Thirty days ...	When notice of the award is delivered to the plaintiff.
	Part II.—Ninety days.	
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days ...	When the act or omission takes place.
	Part III.—Six months.	
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.
4.—Under Act No. IX. of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers*), section 1.	Ditto ...	When the wages, hire, or price of works claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, Chapter XXXIX.† (*Of Summary Procedure on Negotiable Instruments*).	Ditto ...	When the instrument suedupon becomes due and payable.
	Part IV.—One year.	
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.

* For special provisions regarding suits under the Dekkhan Agriculturists' Relief Act, see Act XXIII. of 1881, s. 17, and Act XXII. of 1882, s. 19;
for recovery of revenue in the Central Provinces, see Act XVIII. of 1881, s. 118;
to recover possession of land in the Central Provinces, see Act IX. of 1883, s. 81;
in the Tarái, see Reg. IV. of 1876, s. 3.
These provisions are saved by s. 6 of this Act (see *supra*, p. 192).

† This reference to Act X. of 1877, Chapter XXXIX., should now be read as applying to Act XIV. of 1882, Chapter XXXIX.—See s. 3 of the latter Act.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV. (contd.).—One year.	
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	One year ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law or general usage, or on special contract.	Ditto ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold; or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person against whom an order is passed under section 280, 281, 282, or 335 of the Code of Civil Procedure* to establish his right to, or to the present possession of, the property comprised in the order.	Ditto ...	The date of the order.
12.—To set aside any of the following sales:— (*a*) sale in execution of a decree of a Civil Court; (*b*) sale in pursuance of a decree or order of a Collector or other officer of Revenue; (*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (*d*) sale of a patni taluq sold for current arrears of rent. *Explanation.*—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.	Ditto ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto ...	The date of the final decision or order in the case by a Court competent to determine it finally.

* This reference to ss. 280, 281, 282, and 335 of Act X. of 1877, should now be read as applying to ss. 280, 281, 282, and 335 of Act XIV. of 1882.—See s. 3 of the latter Act.

THE SECOND SCHEDULE—(*continued*). Act XV. of 1877.

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.(contd.).—One year.	
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order.
15.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	Ditto ...	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.*	Ditto ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto ...	When the imprisonment ends.
20.—By executors, administrators, or representatives under Act No. XII. of 1855 (*to enable executors, administrators, or representatives to sue and be sued for certain wrongs*).	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives under Act No. XIII. of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*).	Ditto ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

* See Act X. of 1870, Vol. I., p. 843, and Act XVIII. of 1885, *infra*.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV. (contd.)—One year.	
24.—For compensation for libel ...	One year ...	When the libel is published.
25.—For compensation for slander.	Ditto ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
	Part V.—Two years.	
30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII. of 1855 (*to enable executors, administrators, or representatives to sue and to be sued for certain wrongs*) against an executor, administrator, or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife ...	Ditto ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto ...	When restitution is demanded, and is refused by the husband or wife, being of full age and sound mind.

THE SECOND SCHEDULE—(*continued*). Act XV of 1877.

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part V. (contd.).—Two years.	
36.—For compensation for any malfeasance, misfeasance, or nonfeasance independent of contract, and not herein specially provided for.	Two years ...	When the malfeasance, misfeasance, or nonfeasance takes place.
	Part VI.—Three years.	
37.—For compensation for obstructing a way or a watercourse.	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste ...	Ditto ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321, "or under the Probate and Administration Act, 1881, section 139 or 140,"* to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Ditto ...	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code:— VII. of 1822, IX. of 1825, and IX. of 1833.	Ditto ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	Ditto.

* The words and figures quoted have been inserted by s. 156 of Act V, of 1881.

Act XV of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XII.,* or the Bombay Mámlatdárs' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Three years ...	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats, or household furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto ...	The date of the sale.

* This reference to Chapter XL. of Act X. of 1872 is altered in accordance with Act X. of 1882, s. 3.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives, or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.
67.—On a single bond where no such day is specified.	Ditto ...	The date of executing the bond.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
68.—On a bond subject to a condition.	Three years ...	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue.	Ditto ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment, as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto ...	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
79.—By the acceptor of an accommodation-bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Ditto ...	When the bill, note, or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter, and not accounted for.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
90.—Other suits by principals against agents for neglect or misconduct.	Three years ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto ...	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.
101.—For a seaman's wages	Ditto ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto ...	When the wages accrue due.

THE SECOND SCHEDULE—(*continued*). Act XV. of 1877.

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI. (contd.).—Three years.	
103.—By a Muhammadan for exigible dower (*mu'ajjal*).	Three years ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (*mu'wajjal*).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor reenters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By the lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
110.—For arrears of rent ...	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.(concld.).—Three years.	
113.—For Specific performance of a contract.	Three years ...	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not hereinin specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
	Part VII.—Six years.	
116.—For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.*	Ditto ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto ...	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.
	Part VIII.—Twelve years.	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a *patni táluq* or other saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.

* This reference to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

THE SECOND SCHEDULE—(*continued*). Act XV. of 1877.

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII. (contd.).—Twelve years.	
122.—Upon a judgment obtained in British India, or a recognizance.	Twelve years ...	The date of the judgment or recognizance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto ...	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	When the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindú or Muhammadan female by a Hindú or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Ditto ...	The date of the alienation.
126.—By a Hindú governed by the law of the Mitákshara to set aside his father's alienation of ancestral property.	Ditto ...	When the alienee takes possession of the property.
127.—By a person excluded from joint-family property to enforce a right to share therein.	Ditto ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindú for arrears of maintenance.	Ditto ...	When the arrears are payable.
129.—By a Hindú for a declaration of his right to maintenance.	Ditto ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto ...	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto ...	When the plaintiff is first refused the enjoyment of the right.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII. (contd.).—Twelve years.	
132.—To enforce payment of money charged upon immoveable property. *Explanation.*—The allowance and fees respectively called *málikána* and *haqqs* shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.	Twelve years ...	When the money sued for becomes due.
133.—To recover moveable property conveyed or bequeathed in trust, deposited, or pawned, and afterwards bought from the trustee, depositary, or pawnee for a valuable consideration.	Ditto ...	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee for a valuable consideration.	Ditto ...	Ditto.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale.	Ditto ...	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto ...	The date of the sale.
139.—By a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.

THE SECOND SCHEDULE—(*continued*).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII.(concld.).—Twelve years.	
140.—By a remainder-man, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Twelve years ...	When his estate falls into possession.
141.—Like suit by a Hindú or Muhammadan entitled to the possession of immoveable property on the death of a Hindú or Muhammadan female.	Ditto ...	When the female dies.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto ...	When the possession of the defendant becomes adverse to the plaintiff.
	Part IX.—Thirty years.	
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage-debt.
	Part X.—Sixty years.	
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

First Division: Suits—(concluded).

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part X. (concld.).—Sixty years.	
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Sixty years ...	When the right to redeem or to recover possession accrues: Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, * which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

Second Division: † Appeals.‡

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure, 1882, § from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.

* This reference to British Burma should now be read as referring to Lower Burma.—See Act XX. of 1886, s 4.

† As to the construction in Upper Burma and British Baluchistan of references to the Code of Civil Procedure, see Reg. X. of 1887, s. 4, *infra*, p. 220, and Reg. III. of 1890 s. 95, *infra*, p. 232.

‡ For special provisions regarding appeals—
in the Panjáb—see Act XVIII. of 1884, ss. 43 and 50.
under the British Burma Boundaries Act—see Act V. of 1880, s. 20.
under Táj Mahál's Pension Act—see Act I. of 1881, s. 6.
under the Central Provinces Land-revenue Act—see Act XVIII. of 1881, s. 23.
in the Tarái—see Regulation IV. of 1876, s. 42.
under the Ajmer Courts Regulation—see Regulation I. of 1877, s. 22.
under the Ajmer Land and Revenue Regulation—see Regulation II. of 1877, s. 116.
under the Assam Local Rates Regulation—see Regulation III. of 1879, s. 9.
These provisions are saved by s. 6 of this Act (see *supra*, p. 192).

§ The reference to Act X. of 1872 is altered in accordance with Act X. of 1882, s. 3.

THE SECOND SCHEDULE—(*continued*).

Second Division: Appeals—(concluded).

Description of appeal.	Period of limitation.	Time from which period begins to run.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, "or the Chief Court of the Panjáb,"* in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure† to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
153.—Under the same Code, section 601,† to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure, 1882, ‡ to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code ‡ to a High Court, except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure† to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure, 1882, ‡ from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

Third Division§ *: Applications.*‖

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure† to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under Chapter XXXIX. of the Code of Civil Procedure.†	Ditto ...	When the summons is served.

* The words quoted have been inserted by the Panjáb Courts Act (XVII. of 1877), s. 18.

† These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

‡ The references to Act X. of 1872 are altered in accordance with Act X. of 1882, s. 3.

§ As to the construction in Upper Burma and British Baluchistan of references to the Code of Civil Procedure, see Reg. X. of 1887, s. 4, *infra*, p. 220, and Reg. III. of 1890, s. 95, *infra*, p. 222.

‖ Nothing in this Act shall bar the right to make an application under the North-Western Provinces Rent Act, 1881, to assess to rent land held rent-free.—See Act XII. of 1881, s. 30, cls. (*e*) and (*f*); or the right of a málguzár in the Central Provinces to demand revenue of land assessed to revenue and held free.—See Act XVIII. of 1881, s. 117.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
160.—For an order under section 629 of the same Code* restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.
160A.†—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto ...	The date of the decree or order.
161.—[This number, which was substituted for the original by Act XII. of 1879, s. 108, has been re-numbered as 173A, and transposed by Act VII. of 1888.]		
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay, "or the Chief Court of the Panjáb,"‡ in the exercise of its original jurisdiction.	Twenty days ...	Ditto.
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.
164.—By a defendant from an order to set aside a judgment *ex-parte*.	Ditto ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure,* by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, "or on the ground that the decree-holder has purchased without the permission of the Court."§	Ditto ...	The date of the sale.

* These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

† Art. 160A has been inserted by the Provincial Small Cause Courts Act (IX. of 1887), s. 36.

‡ The words quoted have been inserted by the Panjáb Courts Act (XVII. of 1877), s. 18.

§ The words quoted have been added by Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(*continued*).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Thirty days.	The date of the resistance, obstruction, or dispossession.
168.—For re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
169.—For a re-hearing of an appeal heard *ex parte* in the absence of the respondent.	Ditto ...	The date of the decree in appeal.
170.—For leave to appeal as a pauper.	Ditto ...	The date of the decree appealed against.
171.—Under section 371 of the Code of Civil Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.*	Sixty days ...	The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto ...	The date of the sale.
173.—For a review of judgment except in the cases provided for by "No. 160 A and "† No. 162.	Ninety days ...	The date of the decree or order.
173A.—For the issue of a notice under section 258 of the same Code‡ to show cause why the payment or adjustment therein mentioned should not be recorded as certified.§	Ditto ...	When the payment or adjustment is made.

* As amended by Act VII. of 1888, s. 66. Previous to the passing of Act VII. of 1888 there were four numbers here, Nos. 171, 171A, 171B, and 171C, by force of s. 108 of Act XII. of 1879. Nos. 171, 171A, and 171B, as amended by Act XII. of 1879, have been repealed by Act VII. of 1888; and in place of No. 171C, as amended by Act XII. of 1879, the present No. 171 has been inserted.

† The reference quoted has been inserted by Act IX. of 1887, s. 36.

‡ This reference to Act X. of 1877, s. 533, should now be read as applying to Act XIV. of 1882, s. 353.—See s. 3 of the latter Act.

§ No. 173A was formerly No. 161, which was substituted for the original by Act XII. of 1879, s. 108; but Act VII. of 1888 transposes No. 161, and numbers it as 173A.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure.*	Ninety days ...	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
175A.—Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff appellant or defendant-appellant.†	Ditto ...	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.
175B.—Under section 366 of the Code of Civil Procedure by a defendant, or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.†	Ditto ...	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.
175C.—Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 582 of the same Code to have the legal representative of a deceased plaintiff-respondent or defendant-respondent made a plaintiff-respondent or defendant-respondent.†	Ditto ...	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant-respondent.
176.—Under the Code of Civil Procedure,‡ section 516 or 525, that an award be filed in Court.	Ditto ...	The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto ...	The date of the decree appealed against.
178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure,‡ section 230.	Three years ...	When the right to apply accrues.

* This reference to Act X. of 1877, s. 533, should now be read as applying to Act XIV. of 1882, s. 353.—See s. 3 of the latter Act.

† Nos. 175A, 175B, and 175C, have been inserted by Act VII. of 1888, s. 66 (*4*).

‡ These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

THE SECOND SCHEDULE—(*continued*).

Third Division: Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure,* section 230.	Three years; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or 5. (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure,*section 248, or 6. (where the application is to enforce any payment which the decree or order directs to be made at a "certain date) such date."† *Explanation I.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this number shall take effect in favour only of such of the said persons

* These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—Sec s. 3 of the latter Act.

† The words quoted have been substituted for the original words by Act XII. of 1879, s. 108.

Act XV. of 1877.

THE SECOND SCHEDULE—(*continued*).

Third Division : Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
		or their representatives as it may be made by. But, when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally, against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all. *Explanation II.*—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure* or otherwise) to execute the decree or order.
180.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.	Twelve years ...	When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right : Provided that, when the judgment, decree, or

*. This reference to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

THE SECOND SCHEDULE—(*concluded*).

Third Division: Applications—(concluded).

Description of application.	Period of limitation.	Time from which period begins to run.
		order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled there to or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments as the case may be.

EXTRACT FROM REGULATION X. OF 1887.

The Upper Burma Stamps and Limitation Regulation.

Limitation for appeals and applications under the Civil Justice Regulation.

4. Where the Code of Civil Procedure or any part thereof is referred to in the Second or Third Division of the Second Schedule to the Indian Limitation Act, 1877, the reference shall, in cases to which the Upper Burma Civil Justice Regulation, 1886,* is applicable, be construed as applying to that Regulation or the corresponding part thereof, if any.

Temporary suspension of part of the Indian Limitation Act.

5. Notwithstanding anything in section 6 of the Upper Burma Laws Act, 1886, the operation of so much of the Indian Limitation Act, 1877, as limits the period for the institution of suits, shall be suspended on and from the commencement of this Regulation up to the thirtieth day of June 1890.

Power to re institute suits dismissed as barred by limitation.

6. (*1*) At any time on or before that day, any suit which has, since the date on which section 6 of the Upper Burma Laws Act, 1886, came into force, been dismissed, wholly or in part, on the ground of the whole or a part of the relief claimed therein being barred by limitation, may, in so far as the suit was so dismissed, be re-instituted.

* Reg. VIII, of 1886.

Act XVI. of 1877.

(2) In the case of any suit so dismissed, the plaint, if any, shall, on the application of the plaintiff or his legal representative, be returned to him, with a certified copy of the decree in the suit, free of charge, and, if presented again by him, with the copy of the decree, to the Court which so dismissed the suit, or, where that Court has ceased to exist, to a Court having jurisdiction to try so much of the suit as was so dismissed, shall be re-admitted without payment of any further court-fee thereon.

Amount of interest to be decreed in suits instituted during the temporary suspension of the Indian Limitation Act.

7. (1) In any suit instituted on or before the thirtieth day of June 1890, or re-instituted under the last foregoing section on or before that day, the amount of interest which may be decreed for the period prior to the date of the suit shall not exceed the amount of the principal sum decreed in the suit.

(2) For the purposes of sub-section (1)—

(a) section 43 of the Code of Civil Procedure shall be deemed to be in force throughout the territories to which this Regulation extends; and

(b) the date of a suit re-instituted under section 6 of this Regulation shall be deemed to be the date of its re-institution.

EXTRACT FROM REGULATION III. OF 1890.

The British Baluchistan Civil Justice Regulation.

Limitation for appeals and applications under this Regulation.

95. Where the Code of Civil Procedure, or any part thereof, is referred to in the second or third division of the Second Schedule to the Indian Limitation Act, 1877, the reference shall be construed as applying to this Regulation, or the corresponding part thereof, if any.

ACT XVI. OF 1877.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH AUGUST 1877.

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

Preamble.

WHEREAS it is expedient to exempt from the operation of the fourth section of the Bombay Revenue Jurisdiction Act, 1876, certain suits instituted in the districts mentioned in the schedule hereto annexed; It is hereby enacted as follows:—

Addition to section 5, Act X. of 1876.

1. To section 5 of the said Act, the following clause shall be added (namely)—

[*See supra, p. 47.*]

Schedule added to Act X. of 1876.

2. The following schedule shall be added to the said Bombay Revenue Jurisdiction Act, 1876 (namely)—

[*See supra, p. 49.*]

Act XIX. of 1877. & Act I. of 1878.

ACT XIX. OF 1877.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH DECEMBER 1877.

An Act to enable certain District Judges to suspend and remove certain Ministerial Officers, and for other purposes.

Preamble.

WHEREAS it is expedient to empower* the District Judges of the Presidency of Fort Saint George to suspend and remove ministerial officers of the Courts of Subordinate Judges, Munsifs, and District Munsifs; and whereas it is also expedient to provide in the Presidency of Fort Saint George for the transfer of ministerial officers from one Court to another; It is hereby enacted as follows:—

1. [*Repealed by Act XII. of 1887, s. 2.*]

Amendment of Act III. of 1873, section 23.

2. For section 23 of the Madras Civil Courts Act, 1873, the following shall be substituted (that is to say):—

[*See Vol. I. p. 1083.*]

Addition after section 24 of Act III. of 1873.

3. After section 24 of the same Act, the following section shall be inserted:—

[*See Vol. I. p. 1083.*]

ACT I. OF 1878.

THE OPIUM ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JANUARY 1878.

An Act to amend the Law relating to Opium.

Preamble.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Opium Act, 1878;"

Local extent.

It shall extend to such local areas as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time, direct;

Commencement.

And it shall come into force in each of such areas on such day as the Governor-General in Council in like manner directs in this behalf.†

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* In the Preamble, certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

† Came into force—

in the North-Western Provinces and Oudh, from 2nd February 1878.—See *Gazette of India*, Pt. I., Feb. 2, 1878, p. 68;
in the Bombay Presidency, from 1st April 1878, *ibid*, Mar. 23, 1878, p. 231;
in the Lower Provinces of Bengal from 21st August 1878, *ibid*, Aug. 17, 1878, p. 526;
in British Burma from 29th March 1879, *ibid*, Jan. 25, 1879, p. 75;
in Assam from 1st April 1879, *ibid*, Mar. 22, 1879, p. 259;
in the Central Provinces from 28th June 1879, *ibid*, June 28, 1879, p. 441;
in Ajmer and Merwára from 2nd August 1879, *ibid*, July 12, 1879, p. 466;
in the Panjáb from 1st April 1880, *ibid*, Jan. 3, 1880, p. 16;
in the Madras Presidency from 1st July 1880, *ibid*, June 5, 1880, p. 513;
in Coorg from 1st April 1882, *ibid*, Mar. 11, 1882, p. 135; and
in the Cantonment of Morar from 1st July 1883, *ibid*, June 30, 1883, p. 266.

The only places in which the Act has not been declared in force are the Andaman and Nicobar Islands and the Pargana of Manpur. In these places the former Opium Act, XXIII. of 1876 (as amended by Act VI. of 1877), is still applicable.

Act I. of 1878.

Reference to Bombay Regulations XXI. of 1827 and XX. of 1830 in Act VII. of 1836.

2.* The reference made to Bombay Regulations XXI. of 1827 and XX. of 1830 in Act No. VII. of 1836 shall be read as if made to the corresponding sections of this Act. Repealed by 4 of 1894

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Opium."

"Opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

"Magistrate."

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class :

"Import."

"Import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

"Export."

"Export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by any other Local Government.

"Transport."

"Transport" means to remove from one place to another within the territories administered by the same Local Government.

Prohibition of poppy cultivation and possession, &c., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy ;

(*b*) manufacture opium ;

(*c*) possess opium ;

(*d*) transport opium ;

(*e*) import or export opium ; or

(*f*) sell opium.

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Local Gazette, make rules, consistent with this Act, to permit, absolutely or subject to the payment of duty or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

(*a*) the cultivation of the poppy ;

(*b*) the manufacture of opium ;

(*c*) the possession of opium ;

(*d*) the transport of opium ;

(*e*) the importation or exportation of opium ; and

* In s. 2, the first and second paragraphs as originally enacted have been omitted, having been repealed by Act XII. of 1891.

(*f*) the sale of opium, and the farm of duties leviable on the sale of opium by retail : Act I. of 1878.

Provided that no duty shall be levied under any such rule on any opium imported, and on which a duty is imposed by or under the law relating to sea-customs* for the time being in force or under section 6.

Duty on opium imported by land.

6. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the *Gazette of India*,—

(*a*) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(*d*) cancel any such declaration.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

8. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, &c.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

* See Act VIII. of 1878, Ch. V.

Act I. of 1878.

shall, on conviction before a Magistrate, be punished, for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecution under section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed—

(*a*) the poppy so cultivated;

(*b*) the opium in respect of which any offence under the same section has been committed;

(*c*) where, in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing, or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import, or export, as the case may be, the whole of the opium which he is transporting, importing, or exporting;

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages, and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated, or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding—

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate—

disposal of things confiscated,

(*a*) the disposal of all things confiscated under this Act; and Act I, of 1878.

and rewards.

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest, and seize, on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept, or concealed in any building, vessel, or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel, or place;

(*b*) in case of resistance, break open any door, and remove any other obstacle to such entry;

(*c*) seize such opium, and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing, which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium,

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search, and arrest.

Searches how made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.*

Officers to assist each other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures, and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

* See Act X. of 1882, s. 3.

Act I. of 1878.

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.*

Disposal of person arrested or thing seized.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy-cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII. of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, &c.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee in respect of a license, such farmer may make an application to the Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving

* See Act X. of 1882, s. 3.

such application, such Collector, Deputy Commissioner, or other officer, may, in his discretion, recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant: Act III. of 1878.

Provided that the execution of any process issued by such Collector, Deputy Commissioner,* or other officer for the recovery of such amount, shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section, or done thereunder, shall affect the right of any farmer of opium-revenue to recover, by suit in the Civil Court or otherwise, any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[*Repealed by Act XII. of 1891.*]

ACT III. OF 1878.

THE NORTH-WESTERN PROVINCES LOCAL RATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH FEBRUARY 1878.

An Act to amend the Law relating to the levy of rates on land in the North-Western Provinces.

Preamble.

WHEREAS, in order to defray the expenditure incurred and to be incurred for the relief and prevention of famine, it is necessary to make a permanent increase in the annual revenues, and it is accordingly expedient to provide, in the territories administered by the Lieutenant-Governor of the North-Western Provinces, for the levy on land of rates in addition to those now applied to local purposes; and whereas it is therefore expedient to repeal the North-Western Provinces Local Rates Act, 1871, and Act No. VII. of 1877, and to re-enact them with the amendments hereinafter appearing; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The North-Western Provinces Local Rates Act, 1878;"

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* The words "Deputy Commissioner" have been substituted for the words "Deputy Collector" by Act XII. of 1891.

Act III. of 1878.

Extent. It extends only to the territories administered by the Lieutenant-Governor of the North-Western Provinces;

and it shall come into force on such date* as the Governor-General in Council, by notification in the *Gazette of India*, directs.

Commencement.

2. On and from such date, the North-Western Provinces Local Rates Act, 1871, and Act No. VII. of 1877 (*to amend the law relating to assignments from the General Provincial Fund established under the North Western Provinces Local Rates Act, 1871*), shall be repealed. But all rates imposed, rules prescribed, allotments made, committees appointed, powers conferred, and notifications published under the former Act shall be deemed to have been respectively imposed, prescribed, made, appointed, conferred, and published hereunder.

Repeal of Acts XVIII. of 1871 and VII. of 1877.

Interpretation-clause. **3.** In this Act—

"Commissioner" means the chief officer in charge of the revenue-administration of a division;

"Collector" means the chief officer in charge of the revenue-administration of a district;

"Land" means land used for agricultural purposes, or waste-land which is culturable;

"Tenant" used in reference to any land means a tenant holding directly from the landlord of such land, and also includes an under-proprietor of such land, and a person bound to pay or deliver anything to such landlord in respect of the use and occupation of such land.†

"Landlord" means the person responsible for the payment of the Government land-revenue, if any, assessed on an estate, and includes a muáfidár, nazránádár or other person holding land, whereof the revenue has, either wholly or in part, been released, compounded for, redeemed, or assigned;

"Estate" means all or any part of a village separately assessed to the land-revenue, or separately exempt from the payment thereof;

"Year" means the year commencing on the first day of April.

II.—Rates on Land in Districts of which the Settlement is liable to Revision.

Rate on estates where the settlement has expired.

4. Every estate situate in any district in which the term of the settlement of the land-revenue made under Regulation IX. of 1833 has expired shall be liable to the payment of such rate, not exceeding five per cent. on its annual value, as the Lieutenant-Governor from time to time imposes.

Such rate shall be paid by the landlord independently of, and in addition to, any land-revenue assessed on the estate:

Provided that, in estates in which, before the passing of this Act, provisional engagements have been taken from the landlord for the payment of the

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* April 1, 1879.—See *Gazette of India*, 1879, Pt. I., p. 248.

† The definition of "tenant" has been substituted for the original by Act VIII. of 1879, s. 28.

land-revenue and cesses in one consolidated sum, and in which it appears to the Lieutenant-Governor inexpedient to cancel such engagements, one-eleventh part of such sum shall be deducted on account of such cesses, and shall be treated in all respects as if it were a portion of a rate levied under the former part of this section. Act III. of 1878.

Further rate.

Every estate situate in a district of which the land-revenue is liable to periodical revision, shall be liable, in addition to any rates levied under the foregoing portion of this section, to the payment of such further rate, not exceeding one per cent. on its annual value, as the Lieutenant-Governor from time to time imposes.

Such further rate shall be paid by the landlord independently of, and in addition to, any land-revenue assessed on the estate.

"Annual value" means as follows:—

(1.) In cases in which the settlement of the land-revenue is liable to periodical revision, it means double the amount of the land-revenue for the time being assessed on an estate;

(2.) In cases in which such settlement is not liable to such revision, or in which the land-revenue has been, wholly or in part, released, compounded for, redeemed, or assigned, it means double the amount which, if the settlement were liable to such revision, would be assessable as land-revenue on the estate.

III.—Rates on Land in Estates of which the Land-revenue is not liable to periodical Revision.

Rate on estates where revenue is not periodically revised.

5. Every estate situated in a district of which the land-revenue is not liable to periodical revision shall be liable to the payment of such rate as the Lieutenant-Governor from time to time imposes, not exceeding two annas for each acre under cultivation, or which has been cultivated within the three years next before the assessment of the rate.

Further rate.

The Lieutenant-Governor may, from time to time, impose upon any such estate, in addition to any rate imposed under the first clause of this section, a further rate of such amount, not exceeding half an anna for each acre as aforesaid, as he thinks fit.

Rate to be paid by landlord.

6. The rate or further rate shall be paid by the landlord independently of, and in addition to, any land-revenue assessed on the estate, and in addition to the cess levied now on account of roads.

Lieutenant-Governor to prescribe rules for ascertaining area of assessable land.

7. The Lieutenant-Governor shall from time to time, as occasion requires, make rules for ascertaining the area of the land assessable under section 5.

Landlord's right to recover half rate from tenants.

8. The landlord may recover, from every tenant of land on which such rate or further rate has been assessed, and for the payment of which the landlord is liable, an amount equal to one-half of the rate or further rate assessed on the land held by such tenant.

Act III. of 1878.

Power to make rules as to when a landlord may recover rates from tenants holding at fixed or beneficial rates.

9. The Lieutenant-Governor may, from time to time, make rules consistent with this Act for determining the cases in which a landlord shall be entitled to recover, from tenants holding at fixed or beneficial rates of rent, the whole or any portion of the rate or further rate assessed on the land held by such tenants.

IV.—Manner in which the Rates are to be expended.

Rates to be carried to general fund.

10. The amount standing at the credit of the fund constituted under section 9 of the said North-Western Provinces Local Rates Act, 1871,* at the time this Act comes into force,† and the proceeds of all rates imposed under this Act, shall be carried to the credit of a general provincial fund.

Appropriation for increasing revenue available for famine purposes.

11. (*a*) From such fund the Lieutenant-Governor shall in each year appropriate, in such manner as the Governor-General in Council from time to time directs, such amount not exceeding the proceeds of the further rates assessed in such year under sections 4 and 5, as the Governor-General in Council may direct, for the purpose of increasing the revenues available for defraying expenditure incurred or to be incurred for the relief and prevention of famine in the said territories, or, if the Governor-General in Council so directs, in any other part of British India.

Assignment for canals and railways.

(*b*) The Lieutenant-Governor may, from time to time, assign from such fund such amount as he thinks fit, to be applied in payment of charges incurred or to be incurred on account of such canals and railways as he, with the previous sanction of the Governor-General in Council, may declare to be works of general provincial utility:

Provided that the amounts to be assigned in any year shall not exceed one-tenth of the proceeds of the rates assessed in such year under the first clause of section 4 and the first clause of section 5.

Allotment for local improvements.

"(*c*)‡ Subject to the appropriation directed by clause (*a*), the Lieutenant-Governor may, from time to time, reserve from such fund such amounts as he thinks fit to be applied in or for the benefit of each district for expenditure on all or any of the following matters:—

(1) the maintenance of the village and road police and the district-post;

(2) the construction, repair, and maintenance of lunatic asylums;

(3) the registration of traffic; and

(4) any other matter tending to promote the welfare of the district which it is in his opinion necessary to place under provincial and not under local administration.

"(*d*)‡ Subject as aforesaid, the Lieutenant-Governor may allot from such fund such amounts as he thinks fit to the district fund constituted under the North-Western Provinces and Oudh Local Boards Act, 1883:

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* Act XVIII. of 1871 has been repealed by s. 2 of this Act.

† April 1, 1879.—See *Gazette of India*, 1879, Pt. I., p. 248.

‡ In s. 11 the clauses quoted have been substituted for the original cl. *c* by Act XIV. of 1883, s. 56.

"Provided that the amounts so reserved and allotted in any year for the benefit of any district shall not be less than nine-tenths of the proceeds of the rates assessed under the first clause of section 4 and the first clause of section 5 in such district in such year." Act III. of 1878.

12, 13. [*Repealed by Act XIV. of 1883, s. 57.*]

14.* Accounts of the receipts in respect of all rates levied under this Act shall be kept in each district, and shall, at all reasonable times, be open to the inspection of the District Board constituted for the district under the North-Western Provinces and Oudh Local Boards Act, 1883.

Accounts to be kept.

An abstract of such accounts shall also be published annually in the local official Gazette.

15. [*Repealed by Act XIV. of 1883, s. 57.*]

V.—Miscellaneous.

16. Suits for the recovery from co-sharers, tenants, or others, of any sum on account of any rate imposed under this Act, and all suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Collector, as if such suits had been included among the suits mentioned in section 93 of the North-Western Provinces Rent Act, 1881;†

Suits under Act cognizable by Collector.

and appeals from decisions in such suits shall be cognizable in accordance with the provisions of the North-Western Provinces Rent Act, 1881.†

17. In matters connected with the assessment and collection of any sum leviable under this Act, an appeal shall lie to the Commissioner from the order of the Collector, provided that such appeal be presented within thirty days from the date of the order.

Limitation of appeals.

The Commissioner's decision on such appeal shall be final; but all such decisions may be reviewed by the Board of Revenue.

18. The Lieutenant-Governor may invest any officer subordinate to a Collector with all or any of the powers of a Collector for the purposes of this Act.

Power to invest subordinate officers with powers of Collector.

The orders passed by any officer so invested shall be subject to revision by the Collector of the district.

19. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due on the land on account of which the rate is payable.

Recovery of rates.

20. The Lieutenant-Governor may, by notification, from time to time,

Supplementary powers of Local Government.

(*a*) prescribe by what instalments and at what times such rate shall be payable, and by whom it shall be assessed, collected, and paid;

* S. 14 has been substituted for the original by Act XIV. of 1883, s. 56.

† In s. 16 the references have been altered in accordance with Act VIII. of 1879, s. 29, and Act XII. of 1881, s. 2.

Act IV. of 1878.

(*b*) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(*c*) exempt any portion of the territories under his government from the operation of this Act, or exempt any estate from liability to pay the whole or any part of any rate under this Act, and cancel such exemptions;

(*d*) direct fresh measurements, and vary the assessment accordingly.

Every notification under this section shall be published in the local Gazette.

ACT IV. OF 1878.

THE OUDH LOCAL RATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH FEBRUARY 1878.

An Act to amend the Law relating to the levy of rates on land in Oudh.

Preamble.

WHEREAS, in order to defray the expenditure incurred and to be incurred for the relief and prevention of famine, it is necessary to make a permanent increase to the annual revenues: and it is accordingly expedient to provide, in the territories administered by the Chief Commissioner of Oudh, for the levy on land of rates in addition to those now applied to local purposes;

and whereas it is also expedient to empower the said Chief Commissioner to provide for the payment of certain charges incurred or to be incurred on account of canals and railways;

and whereas it is therefore expedient to repeal the Oudh Local Rates Act, and to re-enact it with the amendments hereinafter appearing:—

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Oudh Local Rates Act, 1878:"

Local extent.

It extends only to the territories administered by the Chief Commissioner of Oudh;

Commencement.

And it shall come into force on such date* as the Governor-General in Council by notification in the *Gazette of India* directs.

Repeal of Act XVII. of 1871.

2. On and from such date Act No. XVII. of 1871 (*to provide for the levy of rates on land in Oudh*) shall be repealed. But all rates imposed, committees appointed, and notifications published under the said Act shall be deemed to have been respectively imposed, appointed, and published under this Act.

And all assignments made under section 10 of the said Act shall be deemed to be allotments made under this Act.

Interpretation-clause.

3. In this Act—

"Land" means land assessed to the land-revenue, and includes land whereof the land-revenue has been wholly or in part released, compounded for, redeemed, or assigned:

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* April 1, 1879.—See *Gazette of India*, 1879, Pt. I., p. 248.

"Landholder" means the person in receipt of the rent of any land, and responsible for the payment of the land-revenue, if any, assessed on the estate. It also includes a muáfidár or other person holding land, the land-revenue of which has been wholly or in part released, compounded for, redeemed, or assigned:

"Estate" means all or any part of a village separately assessed to the land-revenue, or separately exempted from payment thereof; and

"Annual value" means—

(1) Where the settlement of the land-revenue is liable to periodical revision—double the amount of the land-revenue assessed on an estate;

(2) Where such settlement is not liable to periodical revision, or where the land-revenue or a portion thereof has been released, compounded for, redeemed, or assigned—double the amount which, if the settlement were liable to periodical revision, would, but for such non-liability, release, composition, redemption, or assignment, have been assessed as land-revenue on the estate:

"Year" means the year commencing on the first day of April.

Rates assessable.

4. The Chief Commissioner may impose on every estate a rate not exceeding two and a quarter per cent. on its annual value. Such rate shall be payable annually by the landholder, independently of, and in addition to, any land-revenue for the time being assessed on the estate and any local cesses now leviable therefrom.

Recovery of rates.

5. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due in respect of the land on account of which the rate is payable.

Power to recover contribution.

6. Every landholder may recover from his co-sharers or pattídárs, if any, a share of any such rate bearing the same proportion to the whole rate that the annual value of the share of such co-sharer or pattídár recorded at the time of the settlement bears to the annual value of the whole estate.

Rate on land in the occupation of an under-proprietor or permanent lessee.

7. Whenever any such rate is charged on a landholder on account of land in the use or occupation of an under-proprietor or permanent lessee, or of a tenant with right of occupancy, whose rent has been fixed or recorded by a competent Court, such landholder may realize, from such under-proprietor, lessee, or tenant, a share of the rate bearing the same proportion to the whole rate that the share of such under-proprietor, lessee, or tenant in the annual value of the land on which the rate is charged bears to half the annual value of such land.

Jurisdiction in suits as to rates.

"**8.*** (1) Suits for the recovery from co-sharers, under-proprietors, permanent lessees, or tenants as aforesaid, of any sum on account of any such rate, and suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Courts of Revenue in Oudh as though such suits were suits mentioned in section 108, clause (15), (16), or (17), of the Oudh Rent Act, 1886.

* S. 8 has been substituted for the original by Act XX. of 1890, s. 36.

Act IV. of 1878.

"(2) Appeals from decisions in such suits shall be cognizable in accordance with the provisions of the said Act as though they were decisions in suits mentioned in section 108, clause (*15*), (*16*), or (*17*), of the said Act."

Appeal to Commissioner.

9. An appeal shall lie to the Commissioner from the order of any person authorized, under the power hereinafter conferred, to make assessments in any matter connected with the assessment of any sum leviable under this Act: provided that such appeal be presented within thirty days from the date of the order.

The decision of the Commissioner on such appeal shall be final; but all such decisions may be reviewed by the "Board of Revenue.*"

General fund.

10. The amount standing at the credit of the fund constituted under section 9 of the said Act XVII. of 1871† at the time this Act comes into force,‡ and the proceeds of all rates imposed under this Act, shall be carried to the credit of a general provincial fund.

Appropriation for increasing revenues available for famine purposes.

11. (*a*) From such fund the Chief Commissioner shall, in each year, appropriate, in such manner as the Governor-General in Council from time to time directs, such amount, not exceeding four-ninths of the proceeds of the rate assessed in such year under this Act, as the Governor-General in Council may direct for the purpose of increasing the revenues available for defraying expenditure incurred or to be incurred for the relief and prevention of famine in the said territories, or, if the Governor-General in Council so directs, in any other part of British India.

Assignment for canals and railways.

(*b*) The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, assign from such fund such amount as he thinks fit, to be applied in payment of charges incurred or to be incurred on account of such canals and railways as he may declare to be works of general provincial utility:

Provided that the amounts so assigned in any year shall not exceed one-eighteenth of the proceeds of the rates assessed in such year.

Allotment for local improvements.

"(*c*) Subject to such appropriation, the Chief Commissioner may, from time to time, reserve from such fund such amounts as he thinks fit to be applied in, or for the benefit of, each district for expenditure on all or any of the following matters:—

(1) the construction, repair, and maintenance of lunatic asylums;

(2) the registration of traffic; and

(3) any other matters tending to promote the welfare of the district which it is, in his opinion, necessary to place under provincial, and not under local, administration.

"(*d*) Subject as aforesaid, the Chief Commissioner may allot from such fund such amounts *as he thinks fit to the district fund* constituted under the North-Western Provinces and Oudh Local Boards Act, 1883:§

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* In s. 9 the words quoted have been substituted for the words "Chief Commissioner" by Act XX. of 1890, s. 37.

† Act XVII. of 1871 has been repealed by s. 2 of this Act.

‡ April 1, 1879.—See *Gazette of India*, 1879, Pt. I., p. 248.

§ In s. 11, the clauses quoted have been substituted for the original by Act XIV. of 1883, s. 59.

"Provided that the amounts so reserved and allotted in any year for the benefit of any district shall not be less than one-half of the proceeds of the rates assessed in such district in such year." Act VI. of 1878.

12. [*Repealed by Act XIV. of 1883, s. 60.*]

"**13.*** Accounts of the receipts in respect of all rates levied under this Act shall be kept in each district, and shall, at all reasonable times, be open to the inspection of the District Board constituted for the district under the North-Western Provinces and Oudh Local Boards Act, 1883. Accounts to be kept.

"An abstract of such accounts shall also be published annually in the local official Gazette."

14. [*Repealed by Act XIV. of 1883, s. 60.*]

Power to make supplementary rules.

15. The Chief Commissioner may, by notification, from time to time,

(*a*) prescribe by what instalments and at what times any rate imposed under this Act shall be payable, and by whom it shall be assessed, collected, and paid;

(*b*) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(*c*) exempt any portion of the territories under his administration from the operation of this Act, and cancel such exemption.

Every notification under this section shall be published in the local Gazette.

ACT VI. OF 1878.†

TREASURE-TROVE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH FEBRUARY 1878.

An Act to amend the Law relating to Treasure-trove.

Preamble.

WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Indian Treasure-trove Act, 1878;"

Extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

2. [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

3. In this Act—

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* S. 13 has been substituted for the original by Act XIV. of 1883, s. 61.

† Act VI. of 1878 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhúm, and the Kolhán in the District of Singbhúm, — See *Gazette of India*, Oct. 22, 1881, Part I., p. 504.

Act VI. of 1878.

"Treasure." "Treasure" means anything of any value hidden in the soil, or in anything affixed thereto:

"Collector." "Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act.

"Owner." When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

Procedure on finding Treasure.

Notice by finder of treasure. **4.** Whenever any treasure, exceeding in amount or value ten rupees, is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found;

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may, from time to time, require.

Notification requiring claimants to appear. **5.** On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf to the effect that, on a certain date (*mentioning it*), certain treasure (*mentioning its nature, amount, and approximate value*) was found in a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place, in which the treasure appears to the Collector to have been found, was, at the date of the finding, in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear. **6.** Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Collector. **7.** On the day notified under section 5 the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and,

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden, within one hundred years before the date of the finding, by a person appearing as required by the said notification, and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected,

the Collector may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same, within two months from the date thereof, to the Chief Controlling Revenue Authority.

Subject to such appeal every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

When no other person claims as owner of place, treasure to be given to finder.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5, and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When only one such person claims, and his claim is not disputed, treasure to be divided,

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder, and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

Act VI. of 1878.

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that, when the Collector has, by his declaration under section 9, rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

and shares to be delivered to parties.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid, and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

In case of dispute as to ownership of place, proceedings to be stayed.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

Settlement of such dispute,

15. If any such suit is instituted, and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

and division thereupon.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire, on behalf of the Government, the treasure or any specified portion thereof, by payment, to the persons entitled thereto, of a sum equal to the value of the materials of such treasure or portion together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Power to acquire the treasure on behalf of Government.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Decision of Collector final, and no suit to lie against him for acts done *bonâ fide*.

Act VII. of 1878.

Collector to exercise powers of Civil Court.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

Power to make rules.

19. The Local Government may, from time to time, make rules consistent with this Act, to regulate proceedings hereunder.

Such rules shall, on being published in the local Gazette, have the force of law.

Penalties.

Penalty on finder failing to give notice, &c.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty on owner abetting offence under section 20.

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

SCHEDULE.

[*Repealed by Act XII. of 1891.*]

ACT VII. OF 1878.*

THE INDIAN FOREST ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1878.

An Act to amend the Law relating to Forests, the Transit of Forest-produce, and the Duty leviable on Timber.

Preamble.

WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce, and the duty leviable on timber; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Forest Act, 1878:"

* Act VII. of 1878 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpur Division: The Districts of Hazáribagh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum. — See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act VII. of 1878.

Commencement.

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Panjáb (except the District of Hazára*), and the Chief Commissioners of Oudh, the Central Provinces, and Assam.

Extension.

And any other Local Government may, from time to time, with the previous sanction of the Governor-General in Council, extend, by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.†

Repeal of enactments.

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hitherto annexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments, and in force at the date of such repeal, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Forest-officer" means any person whom the Governor-General in Council, or the Local Government, or any officer empowered by the Governor-General in Council or the Local Government in this behalf, may, from time to time, appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer:

"Tree" includes palms, bamboos, stumps, brushwood, and canes:‡

"Timber" includes trees when they have fallen or have been felled, and all wood, whether cut up, or fashioned, or hollowed out for any purpose or not:‡

"Forest-produce" includes—

(*a*) the following, whether found in, or brought from, a forest or not, that is to say:—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, and myrabolams, and

(*b*) the following, when found in, or brought from, a forest, that is to say:—

(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including grass, creepers, reeds, and moss), and all parts or produce of such plants,

(*iii*) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts or produce of animals, and

(*iv*) peat, surface-oil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries):‡

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* As to this district, see the Hazára Forest Regulations of 1873, 1874, and 1879.

† The Act does not appear to have been extended to any place under this clause. In the Madras Presidency and British Burma there are special Forest Acts.—See Mad. Act V. of 1882 and Act XIX. of 1881.

‡ The definitions of "tree," "timber," and "forest-produce," have been substituted by Act V. of 1890, s. 2.

"Forest-offence" means an offence punishable under this Act, or under any rule made under this Act: Act VII. of 1878.

"Cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids:

"River" includes streams, canals, creeks, and other channels, natural or artificial.

CHAPTER II.

OF RESERVED FORESTS.

Power to reserve forests.

3. The Local Government may, from time to time, constitute any forest-land or waste-land, which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government.

4. Whenever it is proposed to constitute any land a reserved forest, the Local Government may publish a notification in the local official Gazette—

(*a*) declaring that it is proposed to constitute such land a reserved forest;

(*b*) specifying as nearly as possible the situation and limits of such land;* and

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature, and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this chapter.

Explanation.—For the purpose of clause (*b*) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges, or other well-known or readily intelligible boundaries.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest-Settlement-officer under this Act.

Bar of accrual of forest-rights.

5. During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, "except in accordance with rules prescribed by the Local Government."†

* Cl. *b* of s. 4 has been substituted by Act V. of 1890, s. 3.

† The words quoted have been added by Act V. of 1890, s. 4.

Act VII. of 1878.

Proclamation by Forest-Settlement-officer.

6. When a notification has been issued under section 4, the Forest-Settlement-officer shall publish, in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(*a*) specifying, as nearly as possible, the situation and limits of the proposed forest;*

(*b*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

Enquiry by Forest-Settlement-officer.

7. The Forest-Settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, enquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5, and not claimed under section 6, so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Powers of Forest-Settlement-officer.

8. For the purposes of such enquiry, the Forest-Settlement-officer may exercise the following powers, that is to say :—

(*a*) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate, and make a map of the same; and

(*b*) the powers of a Civil Court in the trial of suits.

Extinction of rights.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by enquiry under section 7, shall be extinguished, unless, before the notification under section 19 is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Treatment of claims relating to practice of shifting cultivation.

9A.† (*1*) In the case of a claim relating to the practice of shifting cultivation, the Forest-Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(*2*) On receipt of the statement and opinion, the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(*3*) If such practice is permitted wholly or in part, the Forest-Settlement-officer may arrange for its exercise—

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* Cl. *a* of s. 6 has been substituted by Act V. of 1890, s. 5.

† S. 9A has been inserted by Act V. of 1890, s. 6.

(*a*) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or Act VII. of 1878.

(*b*) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government.

(*4*) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction, and abolition by the Local Government.

Power to acquire land over which right is claimed.

10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a water-course, the Forest-Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

If such claim is admitted in whole or in part, the Forest-Settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his right; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(*a*) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(*b*) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;

(*c*) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(*d*) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of pasture or to forest-produce.

11. In the case of a claim to rights of pasture or to forest-produce, the Forest-Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest-Settlement-officer.

12. The Forest-Settlement-officer, when passing any order under section 11, shall record, so far as may be practicable,—

(*a*) the name, father's name, caste, residence, and occupation of the person claiming the right;

(*b*) the designation, position, and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

Record where he admits claim.

13. If the Forest-Settlement-officer admits in whole or in part any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, or such other particulars as the case may require.

Act VII. of 1878.

He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of rights admitted.

14. After making such record, the Forest-Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest-Settlement-officer may—

(*a*) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(*b*) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(*c*) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be), to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules as may from time to time be prescribed by the Local Government.

Commutation of rights.

15. In case the Forest-Settlement officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from order passed under section 10, 11, 14, or 15.

16. Any person who has made a claim under this Act, or any forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest-Settlement-officer under section 10, 11, 14, or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may, from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders:

Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

Appeal under section 16.

17. Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the

appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly. Act VII. of 1878.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

Pleaders.

18. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead, and act on its or his behalf before the Forest-Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

Notification declaring forest reserved.

19. When the following events have occurred (namely):—

(*a*) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and

(*b*) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section 16 of that Act,

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in neighbourhood of forest.

20. The forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

Power to revise arrangement made under section 14 or 17.

21. The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

No right acquired over reserved forest, except as here provided.

22. No right of any description shall be acquired in or over a reserved forest except by succession or under a grant of contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

Rights not to be alienated without sanction.

23. Notwithstanding anything contained in section 22, no right continued under section 14, clause (*c*), shall be alienated by way of grant, sale, lease, mortgage, or otherwise, without the sanction of the Local Government: Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

Act VII. of 1878.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered, except to such extent as may have been admitted in the order recorded under section 13.

Power to stop ways and water-courses in reserved forests.

24. The forest-officer may, from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the forest-officer in lieu thereof.

Acts prohibited in such forests.

25. Any person who—

(*a*) makes any fresh clearing prohibited by section 5; or

(*b*) sets fire to a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning in such manner as to endanger such a forest; *

or who, in a reserved forest—

(*c*) kindles, keeps, or carries any fire except at such seasons as the forest-officer may from time to time notify in this behalf;

(*d*) trespasses or pastures cattle, or permits cattle to trespass;

(*e*) causes any damage by negligence in felling any tree, or cutting or dragging any timber;

(*f*) fells, girdles, lops, taps, or burns any tree, or strips off the bark or leaves from, or otherwise damages the same;

(*g*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(*h*) clears or breaks up any land for cultivation or any other purpose; or

(*i*) in contravention of any rules which the Local Government may from time to time prescribe, "kills or catches elephants,†" hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (*a*) any act done by permission in writing of the forest-officer, or under any rule made by the Local Government; or (*b*) the exercise of any right continued under section 14, clause (*c*), or created by grant or contract in writing made by or on behalf of Government under section 22.

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest, or any portion thereof, the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

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* Cl. *b* of s. 25 has been substituted by Act V. of 1890, s. 7.

† The words quoted are repealed in every local area to which the Elephants' Preservation Act (VI. of 1879) extends or is extended.—See s. 2 of that Act.

26. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to declare forest no longer reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III.

OF VILLAGE-FORESTS.

27. The Local Government may, from time to time, assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

Formation of village-forests.

The Local Government may, from time to time, make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests.

CHAPTER IV.

OF PROTECTED FORESTS.

28. The Local Government may, from time to time, by notification in the local official Gazette, declare the provisions of this chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

"Protected forests."

The forest-land and waste-land comprised in any such notification shall be called a "protected forest."

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been enquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if in the case of any forest-land or waste-land, the Local Government thinks that such enquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such enquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Act VII of 1878.

Power to issue notification—

29. The Local Government may from time to time, by notification in the local official Gazette,—

reserving trees,

(*a*) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification;

closing forests,

(*b*) declare that a portion of such forest be closed for such term not exceeding twenty years as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term: Provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed;

prohibiting collection of forest-produce, &c.,

and breaking up or clearing of land.

(*c*) prohibit, from a date fixed as aforesaid, the quarrying of stone or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose, any land in any such forest: and

(*d*) alter or cancel such declaration or prohibition.

Publication of translation of such notification in neighbourhood.

30. The Collector or Deputy Commissioner of the district shall cause a translation, into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Power to make rules for protected forests.

31. The Local Government may from time to time make rules to regulate the following matters:—

(*a*) the cutting, sawing, conversion, and removal of trees and timber, and the collection, manufacture, and removal of forest-produce, from protected forests;

(*b*) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber, or other forest-produce for their own use, and the production and return of such licenses by such persons;

(*c*) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;

(*d*) the payments (if any) to be made by the persons mentioned in clauses (*b*) and (*c*) of this section for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(*e*) the other payments (if any) to be made by them in respect of such trees, timber, and produce, and the places where such payments shall be made;

(*f*) the examination of forest-produce passing out of such forests;

(*g*) the clearing and breaking up of land for cultivation or other purposes in such forests;

(*h*) the protection from fire of timber lying in such forests and of trees reserved under section 29;

(*i*) the cutting of grass and pasturing of cattle in such forests;

(*j*) "killing or catching elephants,"* hunting, shooting, fishing, poisoning water, and setting traps or snares in such forests; Act VII. of 1878.

(*k*) the protection and management of any portion of a forest closed under section 29;

(*l*) the exercise of rights referred to in section 28.

Penalties for acts in contravention of notification under section 29.

32. Any person who commits any of the following offences:—

(*a*) fells, girdles, lops, taps, or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages, any such tree;

(*b*) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(*c*) contrary to any prohibition under section 29, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(*d*) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen, or felled, or to any closed portion of such forest;

(*e*) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion;

(*f*) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(*g*) permits cattle to damage any such tree;

(*h*) infringes any rule made under section 31;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Nothing in this chapter to prohibit acts done in certain cases.

33. Nothing in this chapter shall be deemed to prohibit any act done with the permission in writing of the forest-officer or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29) in the exercise of any right recorded under section 28.

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

Forests under conservancy-administration when this Act comes into force.

34. Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can, according to justice, equity, and good conscience, be classed as reserved forests or protected forests under this Act and declare, by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be:

* The words quoted are repealed in every local area to which the Elephants' Preservation Act (VI. of 1879) extends or is extended:—See s. 2 of that Act.

Act VII. of 1878.

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been enquired into, settled, and recorded in a manner which the Local Government thinks sufficient:

Provided also that, if any such rights have not, on such date, been so enquired into, settled, and recorded, the Local Government shall direct that the same shall be enquired into, settled, and recorded in the manner provided by this Act for reserved or protected forests, as the case may be; and, until such enquiry, settlement, and record have been completed, no such declaration shall abridge or affect such rights.

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forests for special purposes.

35. The Local Government may, from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

(*a*) the breaking-up or clearing of land for cultivation;

(*b*) the pasturing of cattle;

(*c*) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes:—

First.—For protection against storms, winds, rolling stones, floods, and avalanches;

Second.—For the preservation of the soil on the ridges and slopes, and in the valleys of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones, or gravel;

Third.—For the maintenance of a water-supply in springs, rivers, and tanks;

Fourth.—For the protection of roads, bridges, railways, and other lines of communication;

Fifth.—For the preservation of the public health;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit:

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any), and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf, and have been considered by the Local Government.

Power to assume management of forests.

36. In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land, and after considering his objections (if any),

place the same under the control of a forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land. Act VII. of 1878.

The nett profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

Expropriation of forests in certain cases.

37. In any case under this chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

Protection of forests at request of owners.

38. The owner of any land, or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire—

(*a*) that such land be managed on their behalf by the forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(*b*) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof, and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

CHAPTER VII.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.*

Power to impose duty on timber.

39. The Local Government, with the previous sanction of the Governor-General in Council, may levy a duty in such manner, at such places, and at such rates, as it may from time to time prescribe by notification in the local official Gazette on all timber "or other forest-produce,"†

(*a*) which is produced in British India, and in respect of which the Government has any right;

(*b*) which is brought from any place beyond the frontier of British India.

Power to fix value for *ad-valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time, fix, by like notification, the value on which such duty shall be assessed.

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* This heading has been substituted by Act V. of 1890, s. 8, sub-s. 1.

† The words quoted have been inserted by Act V. of 1890, s. 8, sub-s. 2.

Act VII. of 1878.

All duties on timber " or other forest-produce,"* which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

Limit not to apply to purchase-money or royalty.

40. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest-produce.

41. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber " or other "† forest-produce may be imported, exported, or moved into, from, or within, British India;

(*b*) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production, and return of such passes, and for the payment of fees therefor;

(*d*) provide for the stoppage, reporting, examination, and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty, or charge due thereon, or to which it is desirable, for the purposes of this Act, to affix a mark;

(*e*) provide for the establishment and regulation of depôts, to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at, and removed from, such " depôts;" ‡

(*f*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches, and leaves into any such river, or any act which may cause such river to be closed or obstructed;

(*g*) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(*h*) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing,

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* The words quoted have been inserted by Act V. of 1890, s. 8, sub-s. 2.

† In cl. *a* of s. 41, the words "or other" have been substituted for the words " and other " by Act V. of 1890, s. 8, sub-s. 3.

‡ The word " depôts " has been substituted for the word " depôt " by Act XII. of 1891.

or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking-hammers or other implements used for marking timber ; Act VII. of 1878.

(*i*) regulate the use of property-marks for timber, and the registration of such marks ; prescribe the time for which such registration shall hold good ; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.*

Penalty for breach of rules made under section 41.

42. The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

Government and forest-officers not liable for damage to forest-produce at depôt.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere for the purposes of this Act ; and no forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously, or fraudulently.

All persons bound to aid in case of accident at depôt.

44. In case of any accident or emergency involving danger to any property at any such depôt, every person employed at such depôt, whether by the Government, or by any private person, shall render assistance to any forest-officer or police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER IX.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

45. All timber found adrift, beached, stranded, or sunk ;

all wood or timber bearing marks which have not been registered under section 41, or on which the marks have been obliterated, altered, or defaced by fire or otherwise, and

in such areas as the Local Government directs, all unmarked wood and timber,

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this chapter.

Such timber may be collected by any forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be

* This para. has been added by Act V. of 1890, s. 8. sub-s. 4.

Act VII. of 1878.

brought to such depôts as the forest-officer may, from time to time, notify as depôts for the reception of drift-timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

46. Public notice shall, from time to time, be given by the forest-officer, of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

47. When any such statement is presented as aforesaid, the forest-officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, within three* months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal, or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances "not created by him." †

Government and its officers not liable for damage to such timber.

49. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously, or fraudulently.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

* The word "three" has been substituted for the word "two" by Act V. of 1890, s. 9.

† The words quoted have been added by Act V. of 1890, s. 10.

Power to make rules and prescribe penalties.

51. The Local Government may, from time to time, make rules to regulate the following matters (namely):— Act VII. of 1878.

(*a*) the salving, collection, and disposal of all timber mentioned in section 45;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing, and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may, from time to time, prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER X.

PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

52. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts, and cattle used in committing any such offence may be seized by any forest-officer or police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

53. Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest-produce, tools, &c., when liable to confiscation.

54. All timber or forest-produce which is not the property of Government, and in respect of which a forest-offence has been committed, and all tools, boats, carts, and cattle used in committing any forest-offence, shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

55. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a forest-officer; and in any other case may be disposed of in such manner as the Court may direct.

Act VII. of 1878.

Procedure when offender not known or cannot be found.

56. When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the forest-officer, or to be made over to the person "whom the Magistrate deems to be entitled to the same:"*

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure as to perishable property seized under section 52.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52, and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under sections 54, 55, and 56.

58. The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55, or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

59. When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Punishment for wrongful seizure.

61. Any forest-officer or police-officer, who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for counterfeiting or defacing marks on trees and timber, and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(*b*) alters, defaces, or obliterates any such mark placed on a tree or on timber by or under the authority of a forest-officer; or

* The words quoted have been substituted by Act V. of 1890, s. 11.

(*c*) alters, moves, destroys, or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied, Act VII of 1878.

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63. Any forest-officer or police-officer may, without orders from a Magistrate, and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, "or to the officer in charge of the nearest police-station."*

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV. of this Act, unless such act has been prohibited under section 29, clause (*c*).

Power to prevent commission of offence.

64. Every forest-officer and police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to try offences summarily.

65. The District Magistrate† and any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure† any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Operation of other laws not barred.

66. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act: Provided that no person shall be punished twice for the same offence.

Power to compound offences.

67.‡ (*1*) The Local Government may, from time to time, by notification in the official Gazette, empower a forest-officer by name, or as holding an office,—

(*a*) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(*2*) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(*3*) A forest-officer shall not be empowered under this section unless he is a forest-officer of a rank not inferior to that of a ranger, and is in receipt of

* The words quoted have been added by Act V. of 1890, s. 12.

† See Act X. of 1882, s. 3.

‡ S. 67 has been substituted by Act V. of 1890, s. 13.

Act VII. of 1878.

a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (*f*), clause (*a*), shall in no case exceed the sum of fifty rupees.

Presumption that forest-produce belongs to Government.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER XI.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

69. Cattle trespassing in a reserved forest, or in any portion of a protected forest which has been lawfully closed to grazing, shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any forest-officer or police-officer.

Power to alter fines fixed by that Act.

70. The Local Government may, from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied, for each head of cattle impounded under section 69 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say :—

	Rs.	As.
For each elephant	10	0
,, each buffalo or camel	2	0
,, each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer	1	0
,, each calf, ass, pig, ram, ewe, sheep, lamb, goat, or kid ...	0	8

CHAPTER XII.

OF FOREST-OFFICERS.

Local Government may invest forest-officers with certain powers.

71. The Local Government may invest any forest-officer by name, or as holding an office, with the following powers, that is to say :—

(*a*) power to enter upon any land, and to survey, demarcate, and make a map of the same ;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents ;

(*c*) power to issue a search-warrant under the Code of Criminal Procedure ;*

(*d*) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

* See Act X. of 1882, s. 3.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person. Act VII of 1878.

Forest-officers deemed public servants.

72. All forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

73. No suit shall lie against any public servant for anything done by him in good faith under this Act.

Forest-officers not to trade.

74. Except with the permission in writing of the Local Government, no forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest, or in any contract for working any forest, whether in British or Foreign territory.

CHAPTER XIII.

SUBSIDIARY RULES.

Additional powers to make rules.

75. The Local Government may, from time to time, make rules—

(*a*) to prescribe and limit the powers and duties of any forest-officer under this Act;

(*b*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(*c*) for the preservation, reproduction, and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(*d*) generally to carry out the provisions of this Act.

Penalties for breach of rules.

76. Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Rules when to have force of law.

77. All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law:

Provided that no rule made under section 27, 31, or 41 shall be so published without the previous sanction of the Governor-General in Council.

CHAPTER XIV.

MISCELLANEOUS.

Persons bound to assist forest-officers and police-officers.

78. Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and

Act VII. of 1878.

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish, without unnecessary delay, to the nearest forest-officer or police-officer, any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any forest-officer or police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and,

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Management of forests the joint property of Government and other persons.

79. If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time, either—

(*a*) undertake the management of such forest, waste-land, or produce, accounting to such person for his interest in the same; or

(*b*) issue such regulations for the management of the forest, waste-land, or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (*a*) of this section, the management of any forest, waste-land, or produce, it may, from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II. and IV. of this Act shall apply to such forest, waste-land, or produce, and thereupon such provisions shall apply accordingly.

Failure to perform service for which a share in produce of Government forest is enjoyed.

80. If any person be entitled to a share in the produce of any forest which is the property of Government, or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government, that such service is no longer so performed: Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

Recovery of money due to Government.

81. All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

82. When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a forest-officer, until such amount has been paid.

If such amount is not paid when due, the forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

Power to sell such produce.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

83. Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section 4.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

84 * When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

SCHEDULE.

(*See section 1.*)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII. of 1865 ...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII. of 1869 ...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII. of 1873 ...	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX. of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII. of 1865 and VII. of 1869.

* S. 84 has been added by Act V. of 1890, s. 14.

Act VIII. of 1878.

ACT VIII. OF 1878.

THE SEA CUSTOMS ACT.*

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1878.

An Act to consolidate and amend the Law relating to the levy of Sea Customs-duties.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Sea Customs Act, 1878 :"

Local extent.
Commencement.

It extends to the whole of British India, and shall come into force on the first day of April 1878.

Repeal of enactments.

2. The Acts mentioned in "Part I. of the Schedule" † hereto annexed are repealed to the extent specified therein.

References to enactments repealed.

All references to any of the said Acts, in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act.

Saving of appointments, &c.

All appointments, rules, declarations, exemptions, and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates, and periods fixed, and notifications, instructions, directions, prohibitions, passes, and licenses issued, under any Act hereby repealed, shall, if the same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed, and issued under this Act, in so far as they are consistent herewith.

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context—

(*a*) "Chief Customs-Authority" denotes the person authorized to exercise, subject to the Local Government, the chief control in matters relating to Sea-customs in any place in which this Act operates :

(*b*) "Chief Customs-Officer" denotes the Chief Executive Officer of Sea customs for any Port to which this Act applies :

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* See Act XXI. of 1887, which is to be read with, and taken as part of, this Act, and which provides for the establishment of Bonded Warehouses at places other than Customs-ports.

In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act (IV. of 1889) or section 18 of the Sea Customs Act, 1878, as amended by this Act (IV. of 1889), be *primâ-facie* evidence of the place or country in which the goods were made or produced.—Act IV. of 1889, s. 13.

† In s. 2 the words quoted have been substituted for the words "the first Schedule" by Act XII. of 1891, Sch. II.

(*c*) "Customs-Collector" includes every officer of Customs for the time being in separate charge of a Custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge : Act VIII of 1878.

(*d*) "Customs-port" means any place except Aden declared under section 11 to be a port for the shipment and landing of goods :

(*e*) "Foreign Port" means Aden and any place beyond the limits of British India :

(*f*) "Vessel" includes anything made for the conveyance by water of human beings or property :

(*g*) "Coasting-vessel" denotes any vessel proceeding from one Customs-port to another Customs-port, whether touching at any intermediate foreign port or not : or proceeding from or to a Customs-port to or from a place declared to be a port under section 12 :

(*h*) "Master," when used in relation to any vessel, means any person, except a Pilot or Harbour-Master, having command or charge of such vessel :

(*i*) "Warehousing port" means any Customs-port declared under section 14 to be a warehousing port :

(*j*) "Warehouse" denotes any place appointed or licensed under section 15 or section 16.

Agent of owner of goods to be deemed owner for certain purposes.

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-Collector, such person shall, for such purposes, be deemed to be the owner of such goods.

When ship's agent may act for master.

5. Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-Collector, be done by a ship's agent.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, &c.

Appointment of Customs-officers.

6. The Local Government of every place in which duties of Sea-customs are leviable, may appoint such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers.

Suspension and dismissal of such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Delegation of powers under section 6.

7. The Local Government may delegate to any officer of Customs any of the powers vested in it by the first clause of section 6.

Suspension and dismissal of subordinate officers.

Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him.

Act VIII of 1878.

Performance of duties of Customs-Collector, where no Custom-house.

8. At any place for which there is no Custom-house, the Collector of the District and the officers subordinate to him shall, unless the Local Government otherwise directs, perform all duties imposed by this Act on a Customs-Collector and other officers of Customs.

Power to make rules.

9. The Chief Customs-Authority may from time to time, with the sanction of the Local Government, make rules consistent with this Act,

(*a*) prescribing and limiting the powers and duties of officers of Customs;

(*b*) regulating the delegation of their duties by such officers; and

(*c*) generally to carry out the provisions of this Act.

Customs-officers exempted from service on jury or inquest or as assessors.

10. No Chief Customs-Authority or Chief Customs-Officer, and no other officer of Customs whom such Chief Authority or Chief Officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING-STATIONS.

Power to appoint ports, wharves, and Custom-houses.

11. The Local Government may from time to time, by notification in the official Gazette,

(*a*) declare the places within the territories administered by it which alone shall be ports for the shipment and landing of goods;

(*b*) declare the limits of such ports;

(*c*) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods;

(*d*) declare the limits of any such wharf;

(*e*) alter the name of any such port or wharf; and

(*f*) declare what shall, for the purposes of this Act, be deemed to be a Custom-house, and the limits thereof.

Power to declare places to be ports for coasting-trade.

12. The Local Government may also from time to time, in like manner, declare places to be ports for the carrying on of coasting-trade with Customs-ports, or with any specified Customs-port, and for no other purpose.

Power to declare that foreign ports shall be regarded as Customs-ports for certain purposes.

13. The Governor-General in Council may from time to time direct, by notification in the *Gazette of India*, that all goods or any specified class of goods imported from or exported to any foreign port to or from a Customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a Customs-port as the case may be.

Power to declare warehousing ports.

14. The Local Government may from time to time declare, by notification in the official Gazette, that any Customs-port shall be a warehousing port for the purposes of this Act.

Act VIII. of 1878.

Power to appoint public warehouses.

15. At any warehousing port,* the Chief Customs-Authority may from time to time appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to license private warehouses.

16. At any warehousing port,* the Chief Customs-officer may from time to time license private warehouses† wherein dutiable goods may be deposited as aforesaid.

Form of application for license.

Every application for a license for a private warehouse shall be in writing and shall be drawn up in such form as is from time to time prescribed by the Chief Customs-Authority, and shall be signed by the applicant.

Revocation of license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

Stations for Customs-officers to board and land.

17. The Chief Customs-Authority may from time to time appoint in or near any Customs-port, stations, or limits at or within which vessels arriving at, or departing from, such port, shall bring to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1889,‡ direct at what particular place in any such port vessels, not brought into port by pilots, shall anchor or moor.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

Prohibitions.

18.§ No goods specified in the following clauses shall be brought, whether by land or sea, into British India—

(*a*) any book printed in infringement of any law in force in British India on the subject of copyright,‖ when the proprietor of such copyright, or his agent,

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* As to the power of the Chief Customs-Authority to appoint a public, or license a private, warehouse at places other than a warehousing port, see Act XXI. of 1887, s. 2.

† Notwithstanding anything contained in this Act, no arms, ammunition, or military stores, shall be deposited in any warehouse licensed under s. 16 without the sanction of the Local Government.—See the Arms Act (XI. of 1878), s. 7.

‡ In s. 17 the reference to Act XII. of 1875 has been altered as directed by Act X. of 1889, s. 2 (*3*).

§ In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *primâ-facie* evidence of the place or country in which the goods were made or produced.—Act IV. of 1889, s. 13.

‖ See the following enactments :

STATUTES.

3 & 4 Will. IV., c. 15 (Drama); 5 & 6 Vic., c. 45 (Copyright Act); 7 & 8 Vic., c. 12 (International Copyright); 10 & 11 Vic., c. 95 (Import of Reprints of Copyright Works); 13 & 14 Vic., c. 104, ss. 6, 7, 15 (Copyright of Designs); 15 & 16 Vic., c. 12 (International Copyright); 24 & 25 Vic., c. 67, s. 43 (India); 25 & 26 Vic., c. 68 (Copyright in Works of Fine Arts); 39 & 40 Vic., c. 36 (Foreign Reprints of Copyright Works).

ACTS.

XX. of 1847 (Copyright); XXV. of 1867 (Printing Presses and Books); I. of 1877 (Specific Relief); XV. of 1877 (Limitation); VIII. of 1878, s. 18 (Sea Customs); I. of 1879, Sch. II., No. 5 (Stamps); XV. of 1882, s. 19 (*n*) (Presidency S. C. Courts).

Act VIII of 1878.

has given to the Chief Customs-Authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire :

(*b*) counterfeit coin, or coin which purports to be Queen's coin of India or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight or fineness :

(*c*) any obscene book, pamphlet, paper, drawing, painting, representation, figure, or article :

"(*d*) goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandize Marks Act, 1889 :

(*e*) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trademark being or purporting to be, or being a colourable imitation of, the name or trade-mark of any person who is a manufacturer, dealer, or trader in the United Kingdom or in British India, unless—

(i) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) that place and the country in which it is situated are in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark :"*

"(*f*) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881."†

Power to prohibit or restrict importation or exportation of goods.

19. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.

"**19A** ‡ (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer, or other officer appointed by the Local Government in this behalf, may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy

* In s. 18, cls. *d* and *e* have been substituted for the roiginal cl. *d* by Act IV. of 1889, s. 10 (*1*).

† In s. 18, cl. *f* has been added by Act IV. of 1889, s. 10 (*2*).

‡ S. 19A has been added by Act IV. of 1889, s. 11.

himself in accordance with those regulations that the goods are such as are prohibited to be imported. Act VIII. of 1878.

(2) The Governor-General in Council may make regulations, either general or special, respecting the detention and confiscation of goods, the importation of which is prohibited, and the conditions (if any) to be fulfilled before such detention and confiscation, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated, for the purposes of sections 18 and 19, as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India, and in the Calcutta, Fort St. George, Bombay, and Burma Gazettes."

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Except as hereinafter provided, Customs-duties shall be levied at such rates as may be prescribed by or under any law* for the time being in force, on— Goods dutiable.

(a) goods imported or exported by sea into or from any Customs-port from or to any foreign port:

(b) opium, salt, or salted fish imported by sea from any Customs-port into any other Customs-port.

(c) goods brought from any foreign port to any Customs-port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other Customs-port: and

(d) goods brought in bond from one Customs-port to another:

Proviso. Provided that no such duties shall be levied on goods belonging to the Government.

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were en- Goods partially composed of dutiable articles.

* See now Act XI. of 1882.

Act VIII of 1878.

tirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Power to fix tariff-values.

22. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which Customs-duties are by law imposed, and alter any such values fixed by any Tariff Act* for the time being in force.

General power to exempt from Customs-duties.

23. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the Customs-duties leviable on such goods.

Power to authorize, in special cases, exemption from duty.

The Local Government may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which Customs-duties are leviable.

Baggage in actual use.

24. The Customs-Collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the Customs-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use, or as goods subject to duty.

Re-imported articles of country-produce.

25. If goods produced or manufactured in British India be imported into any Customs-port from any foreign port, such goods shall be liable to all the duties, conditions, and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof:

Proviso.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-Collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty.

Excise-duty on importation of certain country-goods.

26. Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any Customs-port, be subjected, unless the Chief Customs-Authority in any particular case otherwise directs by special order, to payment of excise-duty, at the rate to which goods of the like kind and quality are liable at such port.

Goods derelict and wreck

27. All goods derelict, jetsam, flotsam, and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any Customs-port, and shall in other respects be dealt with as if they were imported from a foreign

* See now Act XI. of 1882.

port, unless it be shown to the satisfaction of the Customs-Collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free. Act VIII of 1878.

Country-provisions and stores may be shipped free of duty.

28. Provisions and stores produced or manufactured in British India, required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-Collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart:

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Owner to declare real value, &c., of goods in bill-of-entry or shipping-bill.

29. On the importation into, or exportation from, any Customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill-of-entry or shipping-bill, as the case may be, state the real value, quantity, and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Power to require production of invoice, &c.

In case of doubt, the Customs-Collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance, or other document, whereby the real value, quantity, or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity, or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information:

Provided that, if the owner makes and subscribes a declaration before the Customs-Collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package, or parcel of goods, then the Customs-Collector shall permit him previous to the entry thereof, (1) to open such case, package, or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package, or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information.

"Real value" defined.

30. For the purposes of this Act the real value shall be deemed to be—

(*a*) the wholesale cash-price, less trade-discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or;

(*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

Examination of *ad-valorem* goods.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs. If it appears that the

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real value of such goods is correctly stated in the bill-of-entry or shipping-bill, the goods shall be assessed in accordance therewith.

Procedure where such goods are under-valued by owner.

32. If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill-of-entry or shipping-bill, such officer may detain such goods.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him; and the Customs-Collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government.

If the goods be retained for the use of Government, the Customs-Collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods, in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-Collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the under-valuation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such under-valuation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine.

Abatement allowed on damaged goods.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are in consequence of damage sustained before delivery of the bill-of-entry, of value less than that stated in such bill, the Customs-Collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Reduced duty how determined.

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner—

(*a*) the real value of such goods may be fixed on appraisement by an officer of Customs, and the duty may be assessed on the value so fixed; or

(*b*) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill-of-entry), and at such place, as the Customs-Collector appoints; and the duty may be assessed on the gross amount

realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof. Act VIII. of 1878.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill-of-entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

Deterioration of tariff-value goods.

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon.

35. No abatement of duty on account of damage shall be allowed on wines, spirit, or beer, or on any other articles on which duties are levied on quantity and not on value.

No abatement when duty is levied on quantity.

36. Except as provided in section 94, no amendment of a bill-of-entry or shipping bill relating to goods assessed for duty on the declared value, quantity, or description thereof, shall be allowed after such goods have been removed from the Custom-house.

Restriction on amendment of bill-of-entry or shipping-bill.

37. The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill-of-entry thereof is delivered to the Customs-Collector under section 86 :*

Alteration of import-duty or tariff-valuation.

Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date on which application is made to clear such goods from the warehouse for home-consumption.†

Explanation.—A bill-of-entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping-bill of such goods is delivered under section 137.

Alteration of export-duty or tariff-valuation.

39. When Customs-duties or charges have been short-levied through inadvertence, error, collusion, or misconstruction on the part of the officers of Customs, or through misstatement as to real value, quantity, or description on the part of the owner,

Payment of duties short-levied or erroneously refunded.

or, when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

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* See Act II. of 1888, s. 2, which runs as follows :—

"2. The rate of duty applicable to petroleum of which the bill-of-entry is delivered, within the meaning of section 37 of the Sea Customs Act, 1878, to the Customs-Collector under section 86 of that Act, after the passing of this Act, shall be the rate of duty specified in the second schedule to the Indian Tariff Act, 1882, as amended by this Act."

† In s. 37 the proviso has been substituted for the original provisos by Act VIII. of 1889, s. 1.

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the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund;

and the Customs-Collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid, unless claimed within three months.

40. No Customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error, or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

Power to give credit for, and keep account-current of, duties and charges.

41. The Customs-Collector may, if he thinks fit, instead of requiring payment of Customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-Collector to cover the amount which may at any time be due from them in respect of such duties and charges.

CHAPTER VI.

DRAWBACK.

Drawback allowable on re-export.

42. When any goods, capable of being easily identified, which have been imported by sea into any Customs-port from any foreign port, and upon which duties of Customs have been paid on importation, are re-exported by sea from such Customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:

Conditions for grant of drawback.

Provided that, in every such case, the goods be identified to the satisfaction of the Customs-Collector at such Customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the Custom-house, or within such extended term as the Chief Customs-Authority, on sufficient cause being shown, in any case determines.

Drawback on goods exported to Customs-port and thence to foreign port.

43. When any goods, having been charged with import-duty at one Customs-port, and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port:

Proviso.

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the Custom-house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India.

44. A drawback of the whole of the Customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty on the first entry thereof. Act VIII of 1878.

Drawback of duties on wine and spirit allowed for officers of Navy:

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively; that is to say—

	Gallons.
For every Admiral	1,260
Vice-Admiral	1,050
Rear-Admiral	840
Captain of 1st and 2nd rate ...	630
Captain of 3rd, 4th, and 5th rate ...	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer, Marine-officer, Master, Purser, or Surgeon	105

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping-bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves, as well as the place and date of the last supply for which drawback was allowed.

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

46. The Customs-Collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same, or of any other such vessel, as part of his authorized quantity;

Transfer of wine or spirit from one Naval officer to another.

or may permit the transhipment of any such wine or spirit from one vessel to another for the use of the same Naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-Collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped, or re-landed and warehoused, free of duty;

Provisions and stores for Her Majesty's Navy.

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

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Indian Marine and Marine-survey.

48. The provisions of sections 44, 45, 46, and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine-survey on board of any of the ships of such Marine or Survey proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

Power to declare what goods are identifiable;

49. The Governor-General in Council may from time to time, by notification in the *Gazette of India*,

(*a*) declare what goods shall, for the purpose of this chapter, be deemed to be capable of being easily identified; and

and to prohibit drawback in case of specified foreign port.

(*b*) prohibit the payment of drawback upon the re-exportation of goods to any specified foreign port in India.

When no drawback allowed.

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(*a*) upon goods not included in the export-manifest, or

(*b*) where the goods to be exported are of less value than the amount of drawback claimed, or

(*c*) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-Collector thinks fit to reject it, or

(*d*) on salt, salted fish, or opium.

Time to claim drawback.

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export.

When payment made.

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment.

Declaration by parties claiming drawback.

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been re-landed and are not intended to be re-landed at any Customs-port; and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessel Inwards.

Power to fix places beyond which inward-bound vessels are not to proceed until manifest delivered.

53. The Government may, by notification in the local official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the Pilot, officer of Customs, or other person duly authorized to receive the same.

If, in any river or port wherein a place has been fixed by the Local Government under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the Pilot, officer of Customs, or other person authorized to receive the same.

Delivery of manifest when vessel anchors below place so fixed.

54. If any vessel arrives at any Customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the Pilot, officer of Customs, or other person authorized to receive the same.

Delivery of manifest where no place has been so fixed.

55. Every manifest shall be signed by the master, shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped, or taken on to another port, and all ships' stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the Chief Customs-Authority may from time to time direct.

Signature and contents of manifest.

The Customs-Collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest, and may, if he thinks fits, levy thereon such fee as the Chief Customs-Authority from time to time directs.

Amendment of errors in manifest.

Except as herein provided, no import-manifest shall be amended.

56. The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the Chief Customs-Authority from time to time directs in this behalf.

Duty of person receiving manifest.

57. No vessel arriving in any Customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a *copy* of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-Collector, and an order has been given thereon for such entry.

Bulk not to be broken until manifest, &c., delivered, and vessel entered inwards.

58. The master shall, if required so to do by the Customs-Collector at the time of presenting such application, deliver to the Customs-Collector the bill-of-lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cockett, or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew, and voyage as are put to him by such officer.

Master, if required, to deliver bill-of-lading, &c., to Customs-Collector; and answer questions.

The Customs-Collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

59. Notwithstanding anything contained in section 57, the Customs-Collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass permitting bulk to be broken.

Special pass for breaking bulk.

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The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-Authority.

Manifest, &c., may be delivered by ship's agent.

60. Notwithstanding anything contained in section 53, 54, 57, or 58, the Customs-Collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master.

*Entry outwards, Port-clearance, and Departure of Vessels.**

Order for entry outwards to be obtained before export-cargo is shipped.

61. No vessel shall take on board any part of her export-cargo, until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Customs-Collector, or before an order has been given thereon by such officer for such entry.

Every application made under this section shall specify the name, tonnage, and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped.

No vessel to depart without port-clearance.

62. No vessel, whether laden or in ballast, shall depart from any Customs-port until a port-clearance has been granted by the Customs-Collector or other officer duly authorized to grant the same.

No Pilot to take charge of vessel proceeding to sea without production of port-clearance.

And no Pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance.

Application for port-clearance.

63. Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel.

Master on applying for port-clearance to deliver documents and answer questions.

The master shall, at the time of applying for port-clearance—

(*a*) deliver to the Customs-Collector a manifest in duplicate in such form as may from time to time be prescribed by the Chief Customs-Authority, signed by such master, specifying all goods to be exported in the vessel, and showing separately all goods and stores entered in the import-manifest, and not landed or consumed on board or transhipped :

(*b*) deliver to the Customs-Collector, such shipping-bills or other documents as such Customs-Collector, acting under the general instructions of such Chief Customs-Authority, requires ; and

(*c*) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import-manifests shall, *mutatis mutandis*, apply also to export-manifests delivered under this section.

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* For certain formalities required in respect of the marking of load-lines and the provision of lights and means for making fog-signals before vessels clear, see Act VII. of 1880, ss. 34, 35, 38, 39, and 83.

Power to refuse port-clearance.

64. The Customs-Collector may refuse port-clearance to any vessel until Act VIII. of 1878.

(*a*) the provisions of section 63 are complied with;

(*b*) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by a deposit at such rate, as such Customs-Collector directs;

(*c*) the ship's agent (if any) delivers to the Customs-Collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same;

(*d*) the ship's agent (if any) delivers to the Customs-Collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import-cargo in respect of such goods.

A ship's agent delivering a declaration under clause (*c*) of this section shall be liable to all penalties which might be imposed on the master under section 167, No. 17, and a ship's agent delivering a declaration under clause (*d*) of this section shall be bound to discharge all claims referred to in such declaration.

Grant of port-clearance.

65. When the Customs-Collector is satisfied that the provisions of section 63, and if necessary of clauses (*b*), (*c*), and (*d*) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs.

Grant of port-clearance on security of ship's agent.

66. Notwithstanding anything contained in sections 64 and 65, the Customs-Collector may (subject to such rules as the Chief Customs-Authority may from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs-Collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63.

CHAPTER VIII.

General Provisions affecting Vessels in Port.

Power to depute Customs-officer to board ships.

67. The Customs-Collector at any Customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port.

Duty of such officer.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-Collector otherwise orders.

Officer and servant to be received.

68. Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer and one servant of

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such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

Accommodation of officer and servant.

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold, and mark any goods before landing, and lock up, seal, mark, or otherwise secure any goods on board of such vessel.

Officers of Customs to have free access to every part of ship and may seal and secure goods.

If any box, place, or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-Collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

Power to authorize search and opening of locks.

On production of such order, the officer bearing the same may require that any such box, place, or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

70. Unless with the written permission of the Customs-Collector or in accordance with a general permission granted under section 74, no goods, other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any Customs-port, except in the presence of an officer of Customs.

Goods not to be shipped, discharged, or water-borne, except in presence of officer.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel, the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel, or such additional period as the Customs-Collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

Period allowed for discharge and shipment of cargo.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Consequence of exceeding same.

In calculating any period allowed, or any charge made, under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master shall be deducted.

Allowance for period during which vessel is laid up.

72. Except with the written permission of the Customs-Collector, no goods, other than passengers' baggage, shall in any Customs-port be discharged from any vessel, or be shipped or water-borne to be shipped— Act VIII. of 1878.

Goods not to be landed, &c., on Sundays or holidays, without permission, nor except within fixed hours.

(*a*) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-Authority;

(*b*) on any day, except between such hours as such Authority from time to time appoints by notification in the official Gazette.

73. No goods shall in any Customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

Goods not to be shipped, &c., except at wharves.

unless with the written permission of the Customs-Collector, or when a general permission has been granted under section 74, no goods shall in any Customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-Authority may, by notification in the local official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any Customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs.

Power to exempt from sections 70 and 73.

75. The Chief Customs-Authority may, from time to time, make rules for the landing and shipping of passengers' baggage and the passing of the same through the Custom-house; and for the landing, shipping, and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

Power to make rules regarding baggage and mails.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the Local Government from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the Custom-house.

Landing fees.

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Boat-note.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

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The officer of Customs who receives any boat-note of goods landed, and the officer of Customs, master, or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the Chief Customs-Authority may from time to time direct.

The Local Government may from time to time, by notification in the local official Gazette, suspend the operation of this section in any Customs-port or part thereof.

Goods water-borne to be forthwith landed or shipped.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

Such goods not to be transhipped without permission.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

Power to prohibit plying of unlicensed cargo-boats.

79. The Local Government may declare with regard to any Customs-port, by notification in the local official Gazette, that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandize within the limits of such port.

Issue of licenses and registration of cargo-boats.

In any port with regard to which such notification has been issued, the Chief Officer of Customs, or officer whom the Local Government appoints in this behalf, may, subject to such rules, and on payment of such fees as the Local Government from time to time prescribes by notification in the local official Gazette, issue licenses for, and register, cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

Power to require goods to be weighed or measured on board before landing or after shipment.

80. The Customs-Collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on board-ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

Discharge of cargo may commence on receipt of due permission.

81. When an order for entry inwards of any vessel which has arrived in any Customs-port, or a special pass permitting such vessel to break bulk, has been given, the discharge of the cargo of such vessel may be proceeded with.

Goods not to leave ship unless entered in manifest.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

Procedure in respect of goods not landed within time allowed.

83. If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period as is specified in the bill-of-lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after

the entry of the vessel importing the same, as the Local Government from time to time appoints by notification in the official Gazette, or, Act VIII. of 1878.

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be,—

the master of such vessel, or, on his application, the proper officer of Customs, may then carry such goods to the Custom-house, there to remain for entry.

The Customs-Collector shall thereupon take charge of, and grant receipts for, such goods;

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs-Collector shall hold such goods until he receives notice in writing that the said charges are paid.

84. At any time after the arrival of any vessel, the Customs-Collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the Custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

Power to land small parcels.

If any package or parcel so carried to the Custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the Custom-house shall thereupon hold such package or parcel as provided in that section.

Notice regarding unclaimed packages.

85. Notwithstanding any thing contained in sections 83 and 84, the Customs-Collector in any Customs-port to which the Local Government, by notification in the local official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

Power to permit immediate discharge.

(*a*) at the Custom-house or any specified landing-place or wharf; or

(*b*) at any landing-place or wharf belonging to any Port Commissioners, Port trust, or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner, and such appointment is unrevoked.

The Customs-Collector shall take charge of all goods discharged under clause (*a*) of this section, and otherwise proceed in relation thereto, as provided in sections 83 and 88.

A public body or company, at whose landing-place or wharf any goods are discharged under clause (*b*) of this section, shall not permit the same to be removed without an order in writing from the Customs-Collector.

Act VIII. of 1878.

Entry for home-consumption or warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-Collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the Chief Customs-Authority.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

Assessment of dutiable goods.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home-consumption, or warehouse them, subject to the provisions hereinafter contained.

Procedure in case of goods not cleared or warehoused within four months after entry of vessel.

88. If any goods are not entered and cleared for home-consumption, or warehoused, within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, *first*, to the payment of freight, primage, and general average, if the goods are held by the Customs-Collector subject to such charges under notice given under section 83, 84, or 85; next to the payment of the duties which would be leviable on such goods, if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs-Collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same; provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

Power to direct sale of perishable goods.

If any goods of which the Customs-Collector has taken charge under section 83, 84, or 85, be of a perishable nature, the Customs-Collector may at any time direct the sale thereof, and shall apply the proceeds in like manner:

Proviso.

Provided that, where any goods liable to be sold under this section are arms, ammunition, or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner, as the Local Government may from time to time direct:

Provided, also, that nothing in this section shall authorize the removal for home-consumption of any dutiable goods without payment of duties of Customs thereon.

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION.

Clearance for home-consumption.

89. When the owner of any goods entered for home-consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same; and such order shall be sufficient authority for the removal of such goods by the owner,

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90 When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

Application to warehouse.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is, from time to time, prescribed by the Chief Customs-Authority.

Form of application.

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,

Warehousing bond.

(*a*) to observe all rules prescribed by this Act in respect of such goods;

(*b*) to pay, on demand, all duties, rent, and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate, not exceeding six per cent. per annum, as is for the time being fixed by the Chief Customs-Authority; and

(*c*) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-Authority,

Form of bond.

and shall relate to the cargo or portion of the cargo of one vessel only.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

Forwarding of goods to warehouse.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers, and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

94. On receipt of the goods the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-Collector.

Receipt of goods at warehouse.

No package, butt, cask, or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-Collector, and the goods shall either be returned to the Custom-house in charge of an officer of Customs, or kept in deposit pending such orders, as the warehouse-keeper deems most convenient.

Act VIII. of 1878. If the quantity or value of any goods has been erroneously stated in the bill-of-entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

Goods how warehoused.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks, or hogsheads in which they have been imported.

Warrant to be given when goods are warehoused.

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Form of warrant.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The Local Government may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

Access of Customs-officer to private warehouse.

97. The Customs-Collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Power to cause packages lodged in warehouse to be opened and examined.

98. The Customs-Collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed, or otherwise examined; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-Collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

Access of owners to warehoused goods.

99. Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-Collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-Collector so require, be paid by such owner to the Customs-Collector, and such sum shall, if the Customs-Collector so direct, be paid in advance.

Owner's power to deal with warehoused goods.

100. With the sanction of the Customs-Collector, and after such notice given, and under such rules and conditions as the Chief Customs-Authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,—

(*a*) sort, separate, pack, and repack, the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment, or disposal

thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-Collector permits); Act VIII. of 1878.

(*b*) fill up any casks of wine, spirit, or beer from any casks of the same secured in the same warehouse;

(*c*) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import-brands, unless the whole of the wine or spirit so mixed be of the same brand;

(*d*) bottle-off wine or spirit from any casks;

(*e*) take such samples of goods as may be allowed by the Customs-Collector with or without entry for home-consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-Collector may, at the request of the owner of such goods, cause or permit any refuse, damaged, or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-Collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-Authority or such officer of Customs as such Authority from time to time appoints in this behalf may fix.

Payment of rent and warehouse-dues.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-Collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-Collector shall first satisfy the demand for the discharge of which the sale was ordered, and shall then pay over the surplus (if any) to the owner of the goods:

Provided that the application for such surplus be made within one year from the date of the sale of the goods, or that sufficient cause be shown for not making it within such period.

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Goods not to be taken out of warehouse, except as provided by this Act.

103. Any goods warehoused may be left in the warehouse in which they are deposited, or in any warehouse to which they may, in manner hereinafter provided, be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided;

Period for which goods may remain warehoused under bond.

Act VIII. of 1878.

Goods in private warehouse on cancellation of license.

Provided that, when the license for any private warehouse is cancelled, and the Customs-Collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall, in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home-consumption or shipment.

Of the removal of Goods from one Warehouse to another.

Power to remove goods from one warehouse to another in same port.

104. Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-Officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the Chief Customs-Authority from time to time prescribes.

Power to remove goods from one port to another.

105. Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

Procedure.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-Officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the Chief Customs-Authority from time to time prescribes.

Transmission of account of goods to officers at Port of destination.

106. When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination;

Bond for due arrival and re-warehousing.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time as the Chief Customs-Authority directs.

Such bond may be taken by the proper officer, either at the port of removal or at the port of destination, as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

Act VIII. of 1878.

107. The Chief Customs-Authority may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the Chief Customs-Authority approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due arrival and re-warehousing of such goods at the port of destination within such time as such Authority directs.

Remover may enter into a general bond.

108. Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

Goods on arrival at port of destination to be subject to same laws as goods on first importation.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port.

Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home-consumption or Shipment.

110. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home-consumption by paying (*a*) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (*b*) all rent, penalties, interest, and other charges payable to the Customs-Collector in respect of such goods.

Clearance of bonded goods for home-consumption.

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a foreign port on payment of all rent, penalties, interest, and other charges payable as aforesaid and without payment of import-duty on the same:

Clearance of same for shipment to foreign port.

Provided that the Governor-General in Council may prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134 respectively.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port.

Clearance of same for shipment as provisions, &c., on vessels proceeding to foreign ports.

113. Application to clear goods from any warehouse for home-consumption or for shipment shall be made in such form as the Chief Customs-Authority from time to time prescribes.

Form of application for clearance of goods.

Such application shall ordinarily be made to the Customs-Collector at least twenty-four hours before it is intended so to clear such goods.

Application when to be made.

Act VIII. of 1878.

Re-assessment of warehoused goods when damaged.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

Re-assessment on alteration of duty or tariff-valuation.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff-valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with "such alteration."*

Allowance in case of wine, spirit, beer, or salt.

116. If it appear, at the time of clearing any wine, spirit, beer, or salt from any warehouse for home-consumption, that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-Collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon as follows (namely):—

(*a*) upon wine, spirit, and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the Local Government, and notified in the official Gazette;

For any time not exceeding	6 months	2½	per cent.
exceeding 6 months and not exceeding	12 ,,	5	,, ,,
exceeding 12 months and not exceeding	18 ,,	7½	,, ,,
exceeding 18 months and not exceeding	2 years	10	,, ,,
exceeding 2 years and not exceeding	3 ,,	12	,, ,,

(*b*) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with Customs-duties:

(*c*) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government, and notified in the local official Gazette.

Further special allowance.

117. When any wine, spirit, beer, or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs-Authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

If goods are improperly removed from warehouses or allowed to remain beyond time fixed,

118. If any warehoused goods are removed from the warehouse in contravention of section 102; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse; or

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* In s. 115 the words quoted have been substituted for the words, "the second proviso to section 37," by Act VIII. of 1889, s. 2.

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-Collector; or

or lost or destroyed,

or taken as samples,

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-Collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest, and other charges payable to the Customs-Collector on account of the same.

Collector may demand duty, &c.

119. If any owner fails to pay any sum so demanded, the Customs-Collector may forthwith either proceed upon the bond executed under section 92, or cause such portion, as he thinks fit, of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand;

Procedure on failure to pay duty, &c.

and, if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The nett proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods: Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-Collector from proceeding against such goods in the manner above provided for any amount due thereon.

120. When any warehoused goods are taken out of any warehouse, the Customs-Collector shall cause the fact to be noted on the back of the bond.

Noting removal of goods.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping-bill under which they have been taken away if removed for exportation by sea, or of the bill-of-entry if removed for home-consumption, and the amount of duty paid (if any).

121. A register shall be kept of all bonds entered into for Customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

Register of bonds.

When such register shows that the whole of the goods covered by any bond have been cleared for home-consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-Col-

Cancellation and return of bonds.

Act VIII. of 1878.

lector shall cancel such bond as discharged in full, and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Miscellaneous.

Power to remit duties on warehoused goods lost or destroyed.

122. If any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption, are lost or destroyed by unavoidable accident or delay, the Chief Customs-Authority may in its discretion remit the duties due thereon:

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-Collector within forty-eight hours after the discovery of such loss or destruction.

Responsibility of warehouse-keeper.

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight, or gauge reported by the Custom-house officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117:

Compensation for loss or injury.

Provided that no owner of goods shall be entitled to claim from the Customs-Collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

Public warehouse to be locked.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs

Power to decide where goods may be deposited in public warehouse, and on what terms.

125. The Chief Customs-Authority, or such officer of Customs as such Authority from time to time appoints in this behalf, may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Expenses of carriage, packing, &c., to be borne by owners.

126. The expenses of carriage, packing, and stowage of goods on their reception into, or removal from, a public warehouse, shall, if paid by the Customs-Collector or by the warehouse-keeper, be chargeable on the goods, and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal Bonded Warehouse Association.

127. All the provisions of this Act, relating to private warehouses, shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

CHAPTER XII.

TRANSHIPMENT.

Power to permit transhipment without payment of duty.

128. In the ports of Calcutta, Madras, Bombay, Kárwár, Kárachi, Aden, Rangoon, Maulmain, Akyab, Chittagong, and such other ports as the Governor-General in Council may from time to time, by notification in the *Gazette of India*, direct in this behalf, the Customs-Collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transhipment to some other Customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination.

In any Customs port other than a port in which the preceding clause may for the time being be in force, the Customs-Collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port; provided that, where the goods so transhipped are dutiable, and are to be removed to some uther Customs-port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-Collector directs.

Superintendence of transhipment.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

Subsidiary rules as to transhipment.

130. The powers conferred on the Customs-Collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the Local Government.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint in this behalf.

Entry and warehousing, on arrival of goods transhipped under section 128, clause 2.

131. All goods transhipped under the second clause of section 128 for removal to a Customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.

132. If two or more vessels belonging wholly or in part to the same owner be at any Customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-Collector, be transhipped from one such vessel to any other such vessel without payment of import duty.

Levy of transhipment-fee.

133. A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity, or number, and under such rules, as the Local Government, with the previous sanction of the Governor-General in Council, may from time to time, by notification in the local official Gazette, prescribe for each port.

134. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, prohibit, at any specified port, or at all ports, the transhipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transhipping any specified class of goods.

Power to prohibit transhipment.

135. Except as provided in this Act, no goods shall be transhipped at any port or place in British India.

No goods to be transhipped except as provided.

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

136. Except with the written permission of the Customs-Collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a Customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

No goods to be shipped, &c., till entry outwards of vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

137. Unless the Chief Customs-Authority shall, in the case of any Customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette, no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation, until —

Clearance for shipment.

(*a*) the owner has delivered to the Customs-Collector, or other proper officer, a shipping bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customs-Authority;

(*b*) such owner has paid the duties (if any) payable on such goods; and

(*c*) such bill has been passed by the Customs-Collector.

138. Before any warehoused goods, or goods subject to excise-duties, or goods entitled to drawback of Customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-Collector directs, with one sufficient surety, that such goods shall be duly shipped, exported, and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

Bond required in certain cases before exportation.

139. When goods are cleared for shipment on a shipping-bill presented after port-clearance has been granted, the Customs-Collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

Additional charge on goods cleared for shipment after port-clearance granted.

(*a*) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value:

(*b*) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

140. If any goods mentioned in a shipping-bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs-Collector.

Notice of non-shipment or re-landing and return of duty thereon.

Upon an application being made to the Customs-Collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

141. If, after having cleared from any Customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other Customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-Collector in that behalf.

Goods re-landed or transhipped from a vessel returning to port, or putting into another port.

The Customs-Collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-Collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

142. In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

Vessel returning to port may enter and land goods under import-rules.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

143. The Customs-Collector may, on application by the master of any vessel which is obliged, before completing her voyage, to put into any Customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

Landing of cargo during repairs.

All expenses attending such custody shall be borne by the master.

Act VIII. of 1878.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

144. The Chief Customs-Authority may from time to time make rules prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

Rules for removal of spirit from distillery, without payment of duty, for exportation.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is

(*a*) not exported within four months from the date of the bond, or

(*b*) exported to a Customs-port, unless "either"* the payment of excise-duty as provided by this chapter in respect thereof at the port of destination "or the delivery of the spirit into a warehouse appointed in this behalf by the Local Government having authority at that port,"* is, within six months from the date of the bond, proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been "so paid, or the spirits so delivered."†

145. Spirit intended for exportation under bond for the excise-duty shall, "except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse,‡" be taken from the distillery direct to the Custom-house, under passes to be granted for that purpose by the officers of Excise.

Spirit for export to be taken direct from distillery to Custom-house under pass.

146. Spirit brought to the Custom-house for exportation under bond for the excise-duty may,§ previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond may§ be determined in the same manner.

Gauging and proving of spirit.

147. Excise-duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the Custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the Local Government and notified in the local official Gazette.

Duty to be recovered on any deficiency in spirit under bond.

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* In cl. *b* of the second paragraph of s. 144 the words quoted have been inserted by Act II. of 1887, s. 1 (*1*).

† In the third paragraph of s. 144 the words quoted have been substituted for the word "paid" by Act II. of 1887, s. 1 (*2*).

‡ In s. 145 the words quoted have been inserted by Act IX. of 1885, s. 5 (*1*).

§ In s. 146 the word "may," in each of the two places where that word occurs, has been substituted for the word "shall," by Act II. of 1887, s. 2.

148. "Notwithstanding anything in the Indian Tariff Act, 1882,"* spirit exported under bond for excise-duty from any Customs-port to any other Customs-port shall be charged at the port of importation with excise-duty at the ordinary rate to which spirit of the like kind and strength is liable at such port: Act VIII. of 1878.

Duty on spirit exported under bond from one Indian port to another.

Provided that the Local Government may authorize the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the excise duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.*

149. Spirit brought to the Custom-house "or to a warehouse licensed under any enactment for the time being in force"† for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise.

Removal for local consumption of spirit intended for exportation.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

150.‡ A drawback of excise-duty paid on spirit manufactured in British India, and exported to any foreign port under the provisions of section 138, shall be allowed by the Customs-Collector at the port of exportation:

Drawback of excise-duty on spirit exported.

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the Custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

151. "Notwithstanding anything in the Indian Tariff Act, 1882,"§ if spirit manufactured in British India upon which excise-duty has been paid is exported from one Customs-port to another, and the rate of local excise duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate as theLocal Government at such port may, by notification in the local official Gazette, from time to time prescribe:

Differential duty to be levied in certain cases.

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* In s. 148 the words quoted have been prefixed by Act II. of 1887, s. 3 (*1*); and the proviso has been added by Act II. of 1887, s. 3 (*2*).

† In s. 149 the words quoted have been inserted by Act IX. of 1885, s. 5 (*2*).

‡ The provisions of s. 150 of the Sea Customs Act, 1878, with respect to the allowance of a drawback of excise-duty paid on spirit manufactured in British India and exported to a foreign port, and with respect to the regulation of the drawback by the quantity of such spirit, shall apply also, so far as they can be made applicable, to fermented liquor made in British India from malt and so exported, and to the drawback of the excise-duty paid on such liquor.—Act XIII. of 1890, s. 9.

§ In s. 151 the words quoted have been prefixed by Act II. of 1887, s. 4 (*1*); and the proviso has been added by Act II. of 1887, s. 4 (*2*).

Act VIII. of 1878.

Provided that the Local Government may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.

Rum-shrub, &c., how charged with duty.

152. Rum-shrub, cordial, and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery, shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Provisions respecting spirit applied to such liquors.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

Conditions of drawback and remission of duty on spirit.

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the Custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

Re-landing of spirit shipped.

154. No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

155. When, by any law for the time being in force, a special duty is imposed on spirit rendered unfit for human consumption, the Local Government may from time to time make rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently so rendered unfit, and for causing such spirit to be so rendered, if necessary, by their own officers, and at the expense of the person importing the same, before the Customs-duties leviable thereon are levied.

Decision where no rules or their applicability disputed.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-Officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

CHAPTER XV.

COASTING-TRADE.

Chapters VII., IX., X., and part of XIII. inapplicable to coasting-trade.

156. Except as hereinafter provided, nothing in Chapters VII., IX., X., and sections 136, 139, and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels.

Power to regulate coast-trade.

157. The Local Government may, from time to time, make rules consistent with the provisions of this chapter,

(*a*) extending any provision of the chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels; Act VIII. of 1878.

(*b*) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this chapter;

(*c*) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a foreign port, or at a Customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a foreign port have been unladen;

(*d*) prohibiting the conveyance of any specified class of goods generally, or to, or between specified ports in a coasting-vessel.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

158. Before any coasting vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign, and deliver to the Customs-Collector, a manifest in duplicate containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping-bills or other documents, as may from time to time be prescribed by the Chief Customs-Authority.

If the Customs-Collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-Authority, a separate port-clearance be prescribed.

Delivery of manifest, &c., on arrival.

159. Within twenty-four hours after the arrival of any coasting-vessel at any Customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-Collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any foreign port between such port of arrival and her last preceding Customs-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the Customs-port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-Collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it, except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any Customs-port does not, owing to short-shipment, re-landing, or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

Act VIII. of 1878.

The Customs-Collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

Departure from intermediate port.

160. Before any coasting-vessel departs from any Customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-Collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-Collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

Power to require bond before port-clearance is granted.

161. The Customs-Collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any Customs-port, unless the owner or master gives a bond, with such security as the Customs-Collector deems sufficient, for the production to the Customs-Collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-Collector.

Discharge of cargo.

162. When permission has been granted by the Customs-Collector for the discharge of cargo from any coasting-vessel—

(*a*) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner, without entry thereof at the Custom-house and clearance for home-consumption, but subject to such general check and control as the Chief Customs-Authority may from time to time by rules prescribe;

(*b*) if the vessel has so touched at any such port, or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII. of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX. of this Act relating to goods imported.

Goods on coasting-vessel, if excisable, not to be unladen without permission.

163. If any of the goods on board of any coasting-vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

Grant and revocation of general pass.

164. Notwithstanding anything hereinbefore contained, the Chief Customs-Authority may authorize the Customs-Collector to grant a general pass, on any conditions which such Authority thinks expedient, for the lading and clearance, and for the entry and unlading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein.

Any such general pass may be revoked by order of the Chief Customs Authority by whom the grant thereof was authorized, by notice in writing

under the hand of such Authority, delivered to the master or to the owner of such steam-vessel, or to any of the crew on board. Act VIII. of 1878.

Rules respecting cargo-books to be kept by masters of coasting-vessels.

165. The Chief Customs-Authority may direct that the master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound.

At every port of lading such master shall enter, or cause to be entered, in such book, the name of such port, and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book, the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-Authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159, and 160.

Power to board and examine coasting-vessels.

166. Any duly empowered officer of Customs may go on board of any coasting-vessel in any port or place in British India, and may at any period of a voyage search any such vessel, and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-Collector may further require that any such document belonging to any coasting-vessel then in Port shall be brought to him for inspection.

Act VIII. of 1878.

CHAPTER XVI.

OFFENCES AND PENALTIES.

Punishments for offences.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:—

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act.	General	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek, or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt, or bringing, is not a port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.
3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or	General	such person shall be liable to a penalty not exceeding one thousand rupees.
if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under "No. 4"* of this section, while such vessel is within any bay, river, creek, or arm of the sea which is not a port for the "shipment and landing"† of goods,	11	
4.—If any vessel, which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek, or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the Customs-port where such vessel lawfully discharged her cargo,	11	such vessel shall be liable to confiscation.

* "No. 4" has been substituted for "No. 2" by Act XII. of 1891, Sch. II.

† The words "shipment and landing" have been substituted for the words "landing or shipment" by Act XII. of 1891, Sch. II.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any sea-going vessel inward-bound; or if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward-bound; or if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being re-landed;	11	such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.
6.—If any vessel arriving at, or departing from, any Customs-port, fails when so required under section 17, to bring-to at any such station as has been appointed by the Chief Customs-Authority for the boarding or landing of an officer of Customs	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any Customs-port, after having come to its proper place of mooring or unlading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1889,* or other lawful authority, to some other place of mooring or unlading, or	...	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.
if any vessel not brought into port by a Pilot be not anchored or moored in accordance with any direction of the Chief Customs-Authority under section 17,	17	
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV. of this Act, be imported into or exported from British India contrary to such prohibition or restriction; or if any attempt be made so to import or export any such goods; or if any such goods be found in any package produced to any officer of Customs as containing no such goods; or if any such goods, or any dutiable goods, be found either before or after landing or shipment to have	18 & 19	such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

* This reference to Act XII. of 1875 has been altered as directed by Act X. of 1889.

Act VIII. of 1878.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
been concealed in any manner on board of any vessel within the limits of any port in British India; or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,		
9.—If upon an application to pass any goods through the Custom-house any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General	such person shall be liable to a penalty not exceeding one thousand rupees.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any Customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation; and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods, or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47, or 48, be laden or be unladen from such vessel, without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions, or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
13.—If, in any river or port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	„	such master shall be liable to a penalty not exceeding one thousand rupees.
15.—If, after any vessel arriving has entered any Customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	54	Ditto ditto.
16.—If any manifest delivered under section 53, 54, 60, 63, or 66 is not signed by the person delivering the same, and is not in the form, or does not contain the particulars, required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo, and voyage; or	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	„	
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel; or	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable, and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the Custom-house,		

Act VIII. of 1878.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same, or to enter thereon the particulars referred to in section 56,	53, 54, & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-Collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
20.—If any bill-of-lading or copy required under section 58 is false, and the master is unable to satisfy the Customs-Collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or if the goods mentioned in any such bill or copy have not been *bonâ fide* shipped as shown therein; or if any such bill-of-lading, or any bill-of-lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or if any part of the cargo has been staved, destroyed, or thrown overboard; or if any package has been opened, and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-Collector,	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
21.—If any master of a vessel attempts to depart without a port-clearance,	62	such master shall be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance,	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67.	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such

OFFENCES AND PENALTIES—(*contd.*). Act VIII of 1878.

Offences.	Section of this Act to which offence has reference.	Penalties.
		officer is not received on board; and the vessel if not entered shall not be allowed to enter until such penalty is paid.
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
26.—If any master of a vessel refuses to allow such vessel, or any box, place, or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or if an officer of Customs places any lock, mark, or seal upon any goods in a vessel, and such lock, mark, or seal is wilfully opened, altered, or broken, before due delivery of such goods; or if any such goods are secretly conveyed away; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,	69	the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.
27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be relanded for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.
28.—If any master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped, or water-borne contrary to any of the provisions of section 70, 72, or 75,	70, 72, & 75	such master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped, or water-borne, shall be liable to confiscation.
29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel, and warehoused	76	such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or

OFFENCES AND PENALTIES—*(contd.)*

Offences.	Section of this Act to which offence has reference.	Penalties.
or passed for importation, or of being shipped for exportation, be found without such note ; or if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,		shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.
30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	such person, master, or officer, shall be liable to a penalty not exceeding five hundred rupees.
31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose ; or	73	such goods shall be liable to confiscation ; and the person by whose authority the goods are shipped, landed, water-borne, or transhipped and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay ; or if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-Collector ; or	77	
if any goods are transhipped contrary to the provisions of section 78,	78	
32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,	79	such goods, unless they are covered by a special permit from the Customs-Collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any master of a vessel discharges, or suffers to be discharged, any goods not duly entered in the manifest of such vessel,	55 & 82	such master shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
34.—If any goods are found concealed in any place, box, or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the Custom-house,	General.	such goods shall be liable to confiscation.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed, and before they have been passed through the Custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or, if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable, and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
37.—If it be found, when any goods are entered at, or brought to be passed through, a Custom-house, either for importation or exportation, that (*a*) the packages in which they are contained differ widely from the description given in the bill-of-entry or application for passing them; or (*b*) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters, or conditions according to which such goods are chargeable with duty or are being imported or exported; or (*c*) the contents of such packages have been mis-stated in regard to sort, quality, quantity, or value; or (*d*) goods not stated in the bill-of-entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs,	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(*contd.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
and such circumstance is not accounted for to the satisfaction of the Customs-Collector,		
38.—If, when goods are passed by tale or by package, any omission or mis-description thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or mis-description shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or mis-description, unless it be proved to the satisfaction of the officer in charge of the Custom-house that the variance was accidental.
39.—If, without entry duly made, any goods are taken or passed out of any Custom-house or wharf,	86	the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall

OFFENCES AND PENALTIES—(*contd.*). Act VIII. of 1878.

Offences.	Section of this Act to which offence has reference.	Penalties.
access thereto, or, upon demand made by any such officer, refuses access to any such officer.		further be liable to have his license forthwith cancelled.
45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chapter XI.	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98 ; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-Collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-Collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse, or abstracted from any package, or transferred from one package to another or otherwise for the purpose of illegal removal or concealment,	Chapter XI.	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Chapter XI.	such excess, unless accounted for to the satisfaction of the officer in charge of the Custom-house, shall be

OFFENCES AND PENALTIES—*(contd.)*.

Offences.	Section of this Act to which offence has reference.	Penalties.
		charged with five times the ordinary duty thereon.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Chapter XI.	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists, or is concerned therein,	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transhipment made by the Local Government, or	130	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
any prohibition or order relating to transhipment notified by the Governor-General in Council, or transhipps goods not allowed to be transhipped,	134	
55.—If any goods be taken on board of any vessel at any Customs-port in contravention of section 136,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly-passed shipping-bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping-bill, are not duly shipped before the departure of such vessel, or are relanded; and notice of such short-shipment or re-landing be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142, or 143, at any place other than that for which they have been cleared,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-Collector, be liable to a penalty not exceeding three times the value of such goods so landed.

OFFENCES AND PENALTIES—(*contd.*). Act VIII. of 1878.

Offences.	Section of this Act to which offence has reference.	Penalties.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	142*	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-Collector.
60.—If any person, without a special pass from an officer of excise at the place of exportation, relands or attempts to reland any spirit shipped for exportation,	154	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the Customs-Collector at the Customs-port at which such vessel afterwards first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a Customs-port to or from a foreign port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159, or 160, are not complied with,	158, 159, & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.

* The figures "142" have been substituted for the figures "141" by Act XII. of 1891, Sch. II.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of Customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a foreign port.
66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any master of a coasting-vessel contravenes any of the provisions of section 165,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation.
69.—If the master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered; or if any goods entered as laden, and not noted as delivered, be not on board,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any Customs-port and carried coast-wise; or if any goods which have been brought coast-wise are so unladen in any such port; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo book or both (as the case may be) of such vessel,	Chapter XV.	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
71.—If the master of any coasting-vessel refuses to bring any document to the Customs-Collector when so required under section 166,	166	such master shall be liable to a penalty not exceeding two hundred rupees.
72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits, falsifies, or fraudulently alters or destroys any such document, or any seal, signature, initials, or other mark, made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or being required under this Act to produce any document, refuses or neglects to produce such document; or being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
73.—If any person on board of any vessel or boat in any Customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person, or in his possession,	General	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
74.—If any officer of Customs requires any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.

Act VIII of 1878.

OFFENCES AND PENALTIES—(*contd.*).

Offences.	Section of this Act to which offence has reference.	Penalties.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the Customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
77.—If any police-officer, whose duty it is, under section 180, to send a written notice, or cause goods to be conveyed to a Custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees or to both.
79.—If any officer of Customs, except in the discharge, in good faith, of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods, or shows any samples delivered to him in such capacity; or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of the Customs-Collector under section 202, acts as an agent for the transaction of business as therein mentioned,	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

Packages and contents included in confiscation of goods.

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof. Act VIII of 1878.

Also conveyances and animals used in removal.

Every vessel, cart, or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act, shall in like manner be liable to confiscation.

Tackle, &c., included in confiscation of vessels.

The confiscation of any vessel under this Act includes her tackle, apparel, and furniture.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, &c.

Power to search on reasonable suspicion.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from a vessel:

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Persons may, before search, require to be taken before Magistrate or Customs-Collector.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-Collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-Collector.

The Magistrate or Customs-Collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person; but if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

Power to stop vessels, carts, &c., and search for goods on reasonable suspicion.

171. Any duly empowered officer of Customs, or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart, or other means of conveyance, provided that he has reason to believe that smuggled goods are contained therein.

Power to issue search-warrants.

172. Any Magistrate may, on application by a Customs-Collector stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.*

Persons reasonably suspected may be arrested.

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by

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* See now Act X. of 1882.

Act VIII. of 1878.

any officer of Customs or other person duly employed for the prevention of smuggling.

Persons arrested to be taken to nearest Magistrate or Customs-Collector.

174. Every person arrested on the ground that he has been guilty of an offence under this Act, shall forthwith be taken before the nearest Magistrate or Customs-Collector.

Persons taken before Magistrate may be detained or admitted to bail.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol, or order him to be kept in the custody of the police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs:

Provided that any person so arrested, committed, or kept, shall be released on giving security, to the satisfaction of the Magistrate, to appear at such time and place as such Magistrate appoints in this behalf.

Person escaping may be afterwards arrested.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine, or Marine Survey, is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

Seizure of things liable to confiscation.

178. Any thing liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Things seized how dealt with.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the Custom-house nearest to the place of seizure.

If there be no Custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs-Authority for the deposit of things so seized.

Procedure in respect of things seized on suspicion.

180. When any thing liable to confiscation under this Act are seized by any police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiv-

ing is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting. Act VIII, of 1878.

In every such case the police-officer seizing the things shall send written notice of their seizure and detention to the nearest Custom-house; and, immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest Custom-house, to be there proceeded against according to law.

When seizure or arrest is made, reason in writing to be given.

181. When any thing is seized, or any person is arrested, under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

Adjudication of confiscations and penalties.

182. In every case, except the cases mentioned in section 167, Nos. 26, 72, and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty;

or any person is liable to a penalty,

such confiscation, increased rate of duty, or penalty, may be adjudged—

(*a*) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-Collector;

(*b*) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(*c*) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the Local Government may, from time to time, empower in that behalf in virtue of their office:

Provided that the Local Government may, in the case of any officer performing the duties of a Customs-Collector, limit his powers to those indicated in clause (*b*) or in clause (*c*) of this section, and may confer on any officer by name, or in virtue of his office, the powers indicated in clauses (*a*), (*b*), or (*c*) of this section.

Option to pay fine in lieu of confiscation.

183. Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

On confiscation, property to vest in Her Majesty.

184. When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of police, on the requisition of such officer, shall assist him in taking and holding such possession.

Levy of penalty for failure to bring-to.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-Officer of any Customs-port to which such vessel proceeds, or in which she is,

Act VIII of 1878. and in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf.

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-Officer of the port from which the vessel is stated to have so departed, shall be *primâ-facie* proof of the fact so certified.

Penalty under Act not to interfere with punishment under other law.

186. The award of any confiscation, penalty, or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Offences not specially provided for how tried.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

Appeal from subordinate to Chief Customs-Authority.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-Authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-Collector, and empowered in that behalf, by name or in virtue of his office, by the Local Government.

Such Authority or Officer may thereupon make such further enquiry, and pass such order as he thinks fit, confirming, altering, or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty, or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

Deposit, pending appeal, of duty demanded.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-Collector, at the port where the dispute arises, the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-Collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-Collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

Power to remit penalty or confiscation.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty, or confiscation, has been adjudged under this Act by an officer of Customs, the Chief Customs-Authority is of opinion that such penalty, increased rate, or confiscation, ought to be remitted in whole or in part, or commuted, such Authority may remit the same or any portion thereof, or may

with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods. Act VIII. of 1878.

Revision by Local Government.

191. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-Authority, and from which no appeal lies, reverse or modify such decision or order.

Goods on which penalty incurred not to be removed till payment.

192. When any fine, penalty, or increased rate of duty, is leviable under this Act, the goods in respect of which such fine, penalty, or rate, is leviable, shall not be removed by the owner until such fine, penalty, or rate, is paid.

Other goods of person liable to fine or penalty may be detained.

If any person has become liable to any such fine, penalty, or rate in respect of any goods, the Customs-Collector may detain any other goods belonging to such person passing through the Custom-house until such fine, penalty, or rate, is paid.

Enforcement of payment of penalty.

193. When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate, within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person, and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

Power to open packages and examine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any Customs-port.

Power to take samples of goods.

195. The Customs-Collector may, on the entry or clearance of any goods, or at any time while such goods are being passed through the Custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Every such sample shall, if practicable, be, at the option of the owner, either restored to him or sold, and the proceeds accounted for to him.

Owner to pay expense incidental to compliance with Customs-law.

196. The unshipping, carrying, shipping, and landing of all goods,

Act VIII. of 1878.

and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking, and numbering of goods, where such operations are necessary or permitted,

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

No compensation for loss or injury except on proof of neglect or wilful act.

197. No owner of goods shall be entitled to claim, from any officer of Customs, compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any Custom-house, or on any Custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

Notice of proceedings.

Limitation.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof; or

after the expiration of three months from the accrual of such cause.

Wharfage-fees.

199. The Chief Customs-Authority may, from time to time, fix the period after the expiration of which goods left on any Custom-house wharf, or other authorized landing-place or part of the Custom-house premises, shall be subject to payment of fees, and the amount of such fees.

Duplicates of documents may be granted on payment of fee.

200. A duplicate of any certificate, manifest, bill, or other Custom-house document, may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-Collector, to any person applying for the same, if the Customs-Collector is satisfied that no fraud has been committed or is intended by the applicant.

Amendment of documents.

201. Except in the cases provided for by sections 36, 55, 63, and 94, the Customs-Collector may, in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the Custom-house, to be amended.

Custom-house agents.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any Custom-house, unless such authorization is approved by the Customs-Collector.

Such officer may require any person so authorized to give a bond with sufficient security, in any sum not exceeding five thousand rupees, for his faithful behaviour as regards the Custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-Authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal. Act VIII. of 1878.

Agent to produce authority if required.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and, in default of the production of such authority, may refuse such permission.

The clerk, servant, or agent of any person or mercantile firm may transact business generally at the Custom-house on behalf of such person or firm:

Provided that the Customs-Collector may refuse to recognize such clerk, servant, or agent, unless such person or a member of such firm identifies such clerk, servant, or agent to the Customs-Collector as empowered to transact such business, and deposits with the Customs-Collector an authority in writing duly signed, authorizing such clerk, servant, or agent to transact such business on behalf of such person or firm.

Rules to be notified.

204. All rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged, and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

Cancellation of notifications.

205. Any notification made by any Authority under powers conferred by this Act may be cancelled in like manner by the same Authority.

Remission of duty and compensation to owner in certain cases.

206. If, in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the Customs-Collector shall, with the sanction of the Chief Customs-Authority, make due compensation to such owner.

Saving of Calcutta Port Commissioners and Bombay Port Trust Acts.

207. Nothing in this Act shall affect any law* for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta, or the Trustees of the Port of Bombay, "or any like body hereafter created for any other port."†

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* See Madras Act II. of 1886 (Madras Harbour Trust);
,, Bombay Acts VI. of 1879 (Bombay Port Trust); VI. of 1886 (Karachi Port Trust); and V. of 1888 (Aden Port Trust);
,, Bengal Acts IV. of 1887 (Chittagong Port Commissioners) and III. of 1890 (Calcutta Port Commissioners); and
,, Act XV. of 1879 (Rangoon Port Commissioners).

† In s. 207 the words quoted have been substituted for the word "respectively" by Act IX. of 1885, s. 6.

Act VIII. of 1878.

SCHEDULE.

PART I.

ACTS OF THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Number and year.	Title.	Extent of repeal.
XXI. of 1856 ...	An Act to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal.	Section 8. Sections 10 to 15, both inclusive, the last sentence of section 16, and the form of bond annexed to the Act.
VI. of 1863 ...	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.	The whole.
X. of 1868 ...	An Act to amend the Consolidated Customs Act.	The whole.
XVII. of 1869 ...	An Act to shorten the time for landing cargo.	The whole.
XIV. of 1871 ...	An Act for the further amendment of the Consolidated Customs Act.	The whole.
VI. of 1873 ...	An Act to amend the law relating to the Transhipment of goods imported by steamer, and for other purposes.	The whole.
XVI. of 1875 ...	An Act to amend the law relating to Customs Duties, and for other purposes.	Sections 5, 6, 7, and 12

PART II. Act VIII. of 1878.

FORMS.

A.

FORM OF BOND FOR IMPORT-DUTY.

(See section 92.)

BOND.

No. 18 .

We, *A B*, , now of , and *C D*, , of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government Rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

(*Date*)

(*Signed*)

The above bounden having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in the warehouse for a period of the following goods, that is to say— , imported by Sea from on board of the ship , and entered in the Custom-house Books as No. of the Register of Goods imported by Sea ;

The condition of this Bond is, that ;

If the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof ; and if the said , or their legal representatives, shall pay to the officer in charge of the Custom-house at the Port of all dues, whether Customs-duties, warehouse-dues, rent, or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within from the date of this Bond, or within such further time as the Chief Customs-Authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house ;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home-consumption or re-exportation by sea, the full amount of all Customs-duties, warehouse-dues, rent, and other lawful charges, penalties, and interest demandable as aforesaid, shall have been first paid on the whole of the said goods ;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

(*Date*)

(*Signed*) ( )

B.

FORM OF BONDED WAREHOUSE WARRANT.

(See section 96.)

I do hereby certify that have deposited in the Warehouse of the undermentioned goods , which goods, the engage on demand, after payment of rent and incidental charges and Government dues or customs chargeable thereon, to deliver to the said or their assigns, or to the holder of this warrant to whom it may be transferred by endorsement,

Act VIII. of 1878.

C.

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY.

(See sections 144 and 152.)

We,

are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government Rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives;

dated this day of 18 .

(Signed)

( )

The above bounden being indebted to Her Majesty's Secretary of State for India in Council in the sum of Government Rupees , being the amount of duty payable at the rate of Rupees per imperial gallon London proof, for gallons of (*or* for gallons of proof spirit used in the preparation of dozens of bottles, *or* gallons of cordials and liquors, as specified in the annexed schedule) manufactured at , which the said have been allowed to remove thence for exportation by sea, subject to the provisions of the Sea Customs Act, 1878, without having paid such duty.

The condition of this obligation is, that, if the above bounden , or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Secretary of State in Council duty at the rate of rupees per imperial gallon of proof spirit for all or any portion of the above-mentioned which shall not have been then exported by Sea to a Foreign Port, subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date

If the bond be for cordials and other liquors under section 152, add—

Schedule.

Description of cordials and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

ACT X. OF 1878.

Act X. of 1878.

THE CENTRAL PROVINCES ADDITIONAL RATES ACT.

[RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1878.

An Act for the Levy of Additional Rates on Land in the Central Provinces.

Preamble.

WHEREAS, in order to defray the expenditure incurred and to be incurred for the relief and prevention of famine, it is necessary to make a permanent increase to the annual revenues, and it is therefore expedient to provide, in the territories administered by the Chief Commissioner of the Central Provinces, for the levy of additional rates on land; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Central Provinces Additional Rates Act, 1878:"

Local extent.

Commencement.

It extends only to the territories administered by the Chief Commissioner of the Central Provinces; And it shall come into force on such date as the Governor-General in Council, by notification in the *Gazette of India*, directs.

Additional rate on estates.

2. Every estate shall be liable, in addition to the rates and cesses payable under any settlement for the time being in force, to the payment of such further rate, not exceeding one per cent., on its annual value, as the Chief Commissioner, with the previous sanction of the Governor-General in Council, from time to time imposes.

"Annual value" means,

(1) in cases in which the settlement of the land-revenue is liable to periodical revision, double the amount of the land-revenue for the time being assessed on the estate;

(2) in cases in which such settlement is not liable to such revision, or in which the land-revenue has been, wholly or in part, released, compounded for, redeemed, or assigned, double the amount which, if the settlement were liable to such revision, and an assessment at full rates were made, would be assessed as land-revenue on the estate.

Recovery of rates.

3. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due in respect of the land on account of which the rate is payable.

Rates to be credited to Local Government.

4. The proceeds of all rates levied under this Act shall be carried to the credit of the Local Government.

Appropriation for increasing revenue available for relief and prevention of famine.

5. From the sums so credited, the Chief Commissioner shall, from time to time, appropriate such amount as the Governor-General in Council may direct, for the purpose of increasing the revenues available for defraying the expenditure incurred or to be incurred for the relief and prevention of famine in the said territories; or, if the Governor-General in Council so directs, in any other part of British India.

Act XI. of 1878.

The residue of the said sums, after such appropriation, may be applied by the Chief Commissioner, subject to the control of the Governor-General in Council, to such local works likely to promote the public health, comfort, or convenience* as the Chief Commissioner thinks fit.

Supplementary powers of Chief Commissioner.

6. The Chief Commissioner, with the previous sanction of the Governor-General in Council, may, by notification in the local Gazette, from time to time—

(*a*) determine by what instalments and at what times any rate under this Act shall be payable, by whom it shall be assessed, collected, and paid, and what portion (if any) thereof, paid by any person in respect of an estate, may be recovered by such person from any other persons having any interest in such estate;

(*b*) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(*c*) exempt wholly or in part any portion of the said territories from the operation of this Act, or exempt any estate from liability to pay the whole or any part of any rate under this Act, and cancel any exemption under this clause;

(*d*) direct fresh measurements of estates liable to pay rates under this Act, and vary the assessments accordingly.

ACT XI. OF 1878.†

THE INDIAN ARMS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1878.

An Act to consolidate and amend the Law relating to Arms, Ammunition, and Military Stores.‡

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition, and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called "The Indian Arms Act, 1878;" and it extends to the whole of British India.‡

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* As to the application, to such purposes, of sums realized under the Ferries Act (XVII. of 1878), see Act XVII. of 1878, s. 17, cl. *c*, *infra*.

As to crediting to District Funds in the Central Provinces sums assigned for expenditure on local works under Act X. of 1878, s. 5, or Act XVII. of 1878, s. 17, see Act I. of 1883, s. 23, cl. *e*.

† Act XI. of 1878 has been declared in force in Upper Burma generally except the Shan States (see s. 6, Act XX. of 1886), and in the Santal Parganas (see s. 3 (*a*), Reg. III. of 1872, as amended by Reg. III. of 1886). The Arms Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, *viz.*, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

As to the trial, in a Presidency-town, of offences against the Act, see Act X. of 1882, s. 184.

‡ A license granted under the Indian Explosives Act, 1884, for the manufacture, possession, sale, transport, or importation of an explosive, may be given the effect of a like license granted under the Indian Arms Act, 1878.—See Act IV. of 1884, s. 15.

Savings. But nothing herein contained shall apply to— Act XI. of 1878.

(*a*) arms, ammunition, or military stores on board any sea-going vessel, and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing, or possession of arms, ammunition, or military stores by order of the Government, or by a public servant, or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer.

Commencement. **2.** This Act shall come into force* on such day as the Governor-General in Council, by notification in the *Gazette of India*, appoints.

Repeal of enactments. **3.** On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions, and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published, and prescribed under this Act.

And all such authorities, permissions, licenses, and exemptions, shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force,† and shall then cease to have effect.

Interpretation-clause. **4.** In this Act, unless there be something repugnant in the subject or context,—

"Cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses, and other ordnance and machine-guns, all parts of the same, and all carriages, platforms, and appliances for mounting, transporting, and serving the same:

"Arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads, and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"Ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, guncotton, dynamite, lithofracteur, and other explosive or fulminating material, gunflints, gunwads, percussion-caps, fuses, and friction-tubes, all parts of ammunition, and all machinery for manufacturing ammunition; but does not include lead, sulphur, or saltpetre:

"Military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor-General in Council may from time to time, by notification in the *Gazette of India*, specially extend such section in such part, and includes also all lead, sulphur, saltpetre, and other material to which the Governor-General in Council may, from time to time, so extend such section:

"License" means a license granted under this Act, and "licensed" means holding such license.

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* Came into force from Oct. 1, 1878.—See *Gazette of India*, June 29, 1878, Pt. I., p. 389.

† Came into force from Oct. 1, 1878.

Act XI. of 1878.

II.—Manufacture, Conversion, and Sale.

5. No person shall manufacture, convert, or sell or keep, offer or expose for sale, any arms, ammunition, or military stores, except under a license, and in the manner and to the extent permitted thereby.

Unlicensed manufacture, conversion, and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use, to any person who is not, by any enactment for the time being in force, prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the District Magistrate,* or to the officer in charge of the nearest police station, notice of the sale and of the purchaser's name and address.

III.—Import, Export, and Transport.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition, or military stores, except under a license, and in the manner and to the extent permitted by such license.

Unlicensed importation and exportation prohibited.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf, by name or in virtue of his office, may at any time detain such arms or ammunition until he receive the orders of the Local Government thereon.

Importation and exportation of arms and ammunition for private use.

Explanation.—Arms, ammunition, and military stores, taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of, and brought into, British India within the meaning of this section.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition, or military stores, shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

Sanction of Local Government required to warehousing of arms, &c.

8. [*Repealed by Act XI. of 1882, s. 2 and Sch. I. Re-repealed by Act XII. of 1891.*]

9. [*Repealed by Act XII. of 1891.*]

10. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,—

Power to prohibit transport.

(*a*) regulate or prohibit the transport of any description of arms, ammunition, or military stores over the whole of British India or any part thereof, either altogether or except under a license, and to the extent and in the manner permitted by such license, and

(*b*) cancel any such notification.

* See Act X. of 1882, s. 3.

Explanation.—Arms, ammunition, or military stores, transhipped at a port in British India, are transported within the meaning of this section.

Transhipment of arms.

11. The Local Government, with the previous sanction of the Governor-General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts, at which all vessels, carts, and baggage-animals, and all boxes, bales, and packages in transit, may be stopped and searched for arms, ammunition, and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Power to establish searching-stations.

12. When any person is found carrying or conveying any arms, ammunition, or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may, without warrant, apprehend him, and take such arms, ammunition, or military stores from him.

Arrest of persons conveying arms, &c., under suspicious circumstances.

Any person so apprehended, and any arms, ammunition, or military stores so taken, by a person not being a Magistrate or police-officer, shall be delivered over, as soon as possible, to a police-officer.

Procedure where arrest made by person not a Magistrate or a police-officer.

All persons apprehended by, or delivered to, a police-officer, and all arms and ammunition seized by, or delivered to, any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, &c.

13. No person shall go armed with any arms except under a license, and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, police-officer, or other person empowered by the Local Government in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby.*

Unlicensed possession of fire-arms, &c.

15. In any place to which section 32, clause 2, of Act No. XXXI. of 1860,† applies at the time this Act comes into force, or to which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, specially extend this section, no person shall have in his possession any arms of any description except under a license, and in the manner and to the extent permitted thereby.

Possession of arms of any description without license prohibited in certain places.

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* In s. 14, three paragraphs have been omitted, having been repealed by Act XII. of 1891.

† Repealed by this Act.—See s. 3 and Sch. I.

Act XI of 1878.

Arms of which possession has become unlawful to be deposited at police-station.

16. Any person possessing arms, ammunition, or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license, or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

If the owner of anything deposited under this section does not, within three years from the date on which such thing is so deposited, produce a license authorizing him to possess the same, and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

Power to make rules as to licenses.

17. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any license shall be granted; and may, by such rules, among other matters—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI. of 1862,* applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license, other than a license for possession, shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition, or military stores, are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition, and military stores in his possession or under his control to any officer of Government so empowered, and

(*f*) require the person holding any license, or acting under any license, to produce the same, and to produce or account for the arms, ammunition, or military stores covered by the same when called upon by an officer of Government so to do.

V.—Licenses.

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any District Magistrate,† or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate, or Commissioner, deems it necessary for the security of the public peace, to cancel or suspend such license; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

* Repealed by this Act.—See s. 3 and Sch. I.

† See Act X. of 1882, s. 3.

the Local Government may, at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration. Act XI. of 1878.

VI.—Penalties.

For breach of sections 5, 6, 10, and 13 to 17.

19. Whoever commits any of the following offences (namely) :—

(*a*) manufactures, converts, or sells, or keeps, offers, or exposes for sale, any arms, ammunition, or military stores, in contravention of the provisions of section 5 ;

(*b*) fails to give notice as required by the same section ;

(*c*) imports or exports any arms, ammunition, or military stores, in contravention of the provisions of section 6 ;

(*d*) transports any arms, ammunition, or military stores, in contravention of a regulation or prohibition issued under section 10 ;

(*e*) goes armed in contravention of the provisions of section 13 ;

(*f*) has in his possession or under his control any arms, ammunition, or military stores, in contravention of the provisions of section 14 or section 15 ;

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep ;

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*e*), he is required to exhibit ; or

(*i*) fails to deposit arms, ammunition, or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

For secret breaches of sections 5, 6, 10, 14, and 15.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*), or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway, or to the servant of any public carrier,

For concealing arms, &c.

and whoever, on any search being made under section 25, conceals, or attempts to conceal, any arms, ammunition, or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

For breach of license.

21. Whoever, in violation of a condition subject to which a license has been granted, does, or omits to do, any act, shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, &c., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition, or military stores from any person not licensed, or authorized under the proviso to section 5, to sell the same ; or

For delivering arms, &c., to person not authorized to possess them.

delivers any arms, ammunition, or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

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shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition, or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition, or military stores, and any vessel, cart, or baggage-animal used to convey the same, and any box, package, or bale in which the same may have been concealed, together with the other contents of such box, package, or bale, shall be confiscated.

VII.—Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition, or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition, or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition, or military stores, are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

Seizure and detention by Local Government.

26. The Local Government may, at any time, order or cause to be seized any arms, ammunition, or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Power to exempt.

27. The Governor-General in Council may, from time to time, by notification published in the *Gazette of India*,—

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(*b*) cancel any such notification, and again subject the persons or things, or the part of British India comprised therein, to the operation of such prohibition or direction.

Information to be given regarding offences.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest police-officer or Magistrate; and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest police-officer regarding any box, package, or bale in transit which he may have reason to suspect contains arms, ammunition, or military stores, in respect of which an offence against this Act has been or is being committed. Act XI. of 1878.

Sanction required to certain proceedings under section 19, clause (*f*).

29. Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date on which this Act comes into force* in any province, district, or place to which section 32, clause 2, of Act XXXI. of 1860,† applies at such date, or where such an offence has been committed in any part of British India not being such a district, province, or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the District Magistrate,‡ or, in a Presidency-town, of the Commissioner of Police.

Searches in the case of offences against section 19, clause (*f*), how conducted.

30. Where a search is to be made under the Code of Criminal Procedure, 1882,‡ in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code,‡ be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Power to take census of fire-arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

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* Came into force from Oct. 1, 1878.

† Repealed by this Act.—See s. 3 and Sch. I.

‡ The references to Act X. of 1872 and Act IV. of 1877 are altered in accordance with Act X. of 1882, s. 3.

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THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of repeal.
XVIII. of 1841 ...	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX. of 1854 ...	An Act to provide for the levy of duties of customs in the Arakan, Pegu, Martaban, and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11.*
XXXI. of 1860 ...	An Act relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI. of 1866 ...	An Act to continue Act No. XXXI. of 1860 (relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases), and for other purposes.	The whole.
III. of 1872 ...	The Santhál Parganas Settlement Regulation.	So much of the schedule† as relates to Act XXXI. of 1860 and Act VI. of 1866.
IX. of 1874 ...	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII. of 1841.
XV. of 1874 ...	An Act for declaring the local extent of certain enactments, and for other purposes.	So much of the first schedule as relates to Act XVIII. of 1841.

* The rest of Act XXX. of 1854 was repealed by Act XX. of 1886, s. 5.
† A new schedule has since been substituted for the schedule here mentioned.

THE SECOND SCHEDULE. Act XII. of 1878.

ARMS, &c., LIABLE TO DUTY.

[*Repealed by Act XII. of 1891.*]

ACT XII. OF 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1878.

An Act for the further Amendment of the Panjáb Laws Act, 1872.

Preamble. FOR the purpose of further amending the Panjáb Laws Act, 1872; It is hereby enacted as follows:—

Substitution of new section for Act IV. of 1872, s. 5. **1.** For section 5 of the said Act the following shall be substituted (namely):—

Decisions in certain cases to be according to Native law. 5. [*See Vol. I., p. 973.*]

Substitution of new sections for Act IV. of 1872, ss. 9 to 18. **2.** For sections 9 to 18 (both inclusive) of the same Act, the following shall be substituted:—

Right of pre-emption. 9 to 18. [*See Vol. I., p. 974.*]

Substitution of new section for Act IV. of 1872, s. 35. **3.** For section 35 of the same Act the following shall be substituted (namely):—

Jurisdiction of Court of Wards. 35. [*See Vol. I., p. 978.*]

Amendment of Act IV. of 1872, s. 38. **4.** To section 38 of the same Act the following clause shall be added (namely):—

"Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof."

Amendment of Act IV. of 1872, section 40. **5.** To section 40 of the same Act shall be added the words "and may withdraw any powers so conferred."

6. [*Repealed by Act XII. of 1891, Sch. I.*]

Penalty for breach of rules under Act IV. of 1872. **7.** Whoever breaks any rule made by the Local Government under the same Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to fifty rupees, or with both.*

Recovery of advances made by Government. **8.** To the same Act the following section shall be added:—

52. [*Repealed by Act X. of 1879, s. 2.*]

* The remaining portion of s. 7, repealed by Act XII. of 1891, Sch. I., has been omitted.

Act XIV. of 1878.

ACT XIV. OF 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 1ST AUGUST 1878.

An Act to assimilate Certain Powers of the Local Governments of the North-Western Provinces and Oudh.

Preamble.

WHEREAS the Lieutenant-Governorship of the North-Western Provinces and the Chief Commissionership of Oudh are now united under the administration of a single officer; and whereas it is expedient that, so long as such union continues, the powers of the Local Government of Oudh under the enactments hereinafter mentioned should resemble the powers of the Local Government of the North-Western Provinces under the same or like enactments;* It is hereby enacted as follows:—

1. [*Repealed by Act XXII. of 1886.*]

Alteration of Act XXVI. of 1870, section 6.

2. For the first sentence of section 6 of the Prisons Act, 1870, the following shall be substituted (namely):—

6. [*See Vol. I., p. 869.*]

3. [*Repealed by Act XIII. of 1879.*]

4. [*Repealed by Act XX. of 1890, s. 21(2), and Act XII. of 1891, Sch. I.*]

5. [*Repealed by Act XX. of 1890, s. 35, and Act XII. of 1891, Sch. I.*]

Modification of Act V. of 1871, sections 30 and 31, and Act V. of 1876.

6. For the purpose of the Prisoners Act, 1871, sections 30 and 31, and of the Reformatory Schools Act, 1876, the North-Western Provinces and Oudh shall be deemed to be subject to the same Local Government.

7. [*Repealed by Act XII. of 1891, Sch. I.*]

8. [*Repealed by Act XII. of 1891, Sch. I.*]

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* The remaining portion of this preamble, repealed by Act XII. of 1891, Sch. I., has been omitted.

ACT XVII. OF 1878.*

NORTHERN INDIA FERRIES ACT.

Act XVII. of 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH NOVEMBER 1878.

An Act to Regulate Ferries in Northern India.

WHEREAS it is expedient to regulate ferries in the Punjab, the North-Western Provinces, Oudh, the Central Provinces, Assam, and Ajmere and Merwara; It is hereby enacted as follows:—

Preamble.

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Northern India Ferries Act, 1878":

It extends only to the territories respectively administered by the Lieutenant-Governors of the Punjab and the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, Assam, and Ajmere and Merwara:

Local extent.

It shall come into force in each of the said territories on such date as the Local Government may, by notification in the official Gazette, fix in this behalf.

Commencement.

2. On and from the date on which it comes into force in the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the said Chief Commissioners, Bengal Regulation VI. of 1819 shall be repealed therein; but all determinations, declarations, orders, and rules made, engagements entered into, and securities taken under that Regulation, and then in force, shall be deemed to be respectively made, entered into, and taken under this Act.

Repeal.

3. In this Act the word "ferry" includes also a bridge-of-boats, pontoons, or rafts, a swing-bridge, a flying-bridge, and a temporary bridge, and the approaches to, and landing-places of, a ferry.

Interpretation-clause.

II.—PUBLIC FERRIES.

Power to declare, establish, define, and discontinue public ferries.

4. The Local Government may from time to time—

(*a*) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;

(*b*) take possession of a private ferry, and declare it to be a public ferry;

(*c*) establish new public ferries where, in its opinion, they are needed;

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* Act XVII. of 1878 came into force in the North-Western Provinces and Oudh on Jan. 1, 1879 (see *North-Western Provinces and Oudh Gazette*, 1878, p. 2035); in the Punjab, on April 1, 1881 (see Notification No. 1168, *Punjab Gazette*, March 24, 1881, Part I., p. 139); and in the Central Provinces, on April 1, 1879 (see *Central Provinces Gazette*, 1879, Part I-A, p. 202).

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(*d*) define the limits of any public ferry;

(*e*) change the course of any public ferry; and

(*f*) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change, or discontinuance, shall be made by notification in the official Gazette:

Provided that, when a river lies between two Provinces, the powers conferred by this section shall, in respect of such river, be exercised by the Governor-General in Council, by notification in the *Gazette of India*, and not otherwise:

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the division in which such ferry is situate, or by such other officer as the Local Government may, from time to time, appoint by name or in virtue of his office in this behalf.

Claims for compensation.

5. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4 shall be enquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the Local Government.

Superintendence of public ferries.

6. The immediate superintendence of every public ferry shall, except as provided in section 7 " and section 7A,"* be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the Local Government may, from time to time, appoint by name or in virtue of his office in this behalf;

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat.

Management may be vested in municipality;

7. The Local Government may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

and proceeds paid into municipal fund.

and may further direct that all or any part of the proceeds from such ferry be paid into the municipal fund of such town;

and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly.

In North-Western Provinces and Oudh management may be vested in district board;

7A.† The Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh may direct that any public ferry, wholly or partly within the area subject to the authority of a district board in any district in the North-Western Provinces or Oudh, as the case

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* The reference quoted has been inserted by Act XIV. of 1883, s. 65.

† S. 7A has been inserted by Act XIV. of 1883, s. 64. A similar section has been enacted for the Central Provinces and the Punjab.—See Act I. of 1883, s. 43, and Act XX. of 1883, s. 78.

may be, be managed by that board, and may further direct that all or any part of the proceeds from such ferry be paid into the district fund of that district;

and proceeds paid into district fund.

and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly.

8.* The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

Letting ferry-tolls.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 or section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

9. All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate, as if they were arrears of land-revenue.

Recovery of arrears from lessee.

10. The Local Government may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

Power to cancel lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the Local Government, award.

11. The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the Local Government of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case direct.

Surrender of lease.

12. Subject to the control of the Local Government, the Commissioner of a division, or such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) for the control and the management of all public ferries within such division, and for regulating the traffic at such ferries;

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* S. 8 has been substituted for the original s. 8 by Act III. of 1886, s. 1 (*1*).

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(*b*)* for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted;

(*c*) for compensating persons who have compounded for tolls payable for the use of any such ferry, when such ferry has been discontinued before the expiration of the period compounded for; and

(*d*) generally to carry out the purposes of this Act;

and when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time (subject as aforesaid), make additional rules consistent with this Act—

(*e*) for collecting the rents payable for the tolls of such ferries;

(*f*) in cases in which the communication is to be established by means of a bridge-of-boats, pontoons, or rafts, or a swing-bridge, flying-bridge, or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained, and opened for the passage of vessels and rafts through the same, and

(*g*) in cases in which the traffic is conveyed in boats, for regulating—

(1) the number and kinds of such boats, and their dimensions and equipment;

(2) the number of the crew to be kept by the lessee for each boat;

(3) the maintenance of such boats continually in good condition;

(4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and

(5) the number of passengers, animals, and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may from time to time require.

Private ferry not to ply within two miles of public ferry without sanction.

18. Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain, or work a ferry to or from any point within a distance of two miles from the limits of a public ferry:†

Provided that, in the case of any specified public ferry, the Local Government may, by notification in the official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats "which do not ply for hire, or"‡ which the Local Government expressly exempts from the operation of this section.

Person using approaches, &c., liable to pay.

14. Whoever uses the approach to, or landing-place of, a public ferry, is liable to pay the toll payable for crossing such ferry.

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* Cl. *b* of s. 12 has been substituted for the original by Act III. of 1886, s. 1 (*2*).

† This paragraph has been substituted for the original paragraph by Act III. of 1886, s. 2 (*1*).

‡ The words quoted have been inserted by Act III. of 1886, s. 2 (*2*).

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15. Tolls, according to such rates as are from time to time fixed by the Local Government, shall be levied on all persons, animals, vehicles, and other things crossing any river by a public ferry, and not employed or transmitted on the public service :

Tolls.

Provided that the Local Government may, from time to time, declare that any persons, animals, vehicles, or other things, shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the lease,* shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the Local Government may, from time to time, appoint in this behalf by name or in virtue of his office.

16. The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner of the division so directs, in English, in some conspicuous place near the ferry,

Table of tolls.

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

List of tolls.

17. Except as provided by section 7 " and section 7A,"† all tolls, rents, and compensation received by or on behalf of Government, and all fines levied under this Act, shall be disposed of as follows, that is to say :—

Tolls, rents, compensation, and fines how disposed of.

(*a*) in the territories administered by the Lieutenant-Governor of the North-Western Provinces, the residue of such tolls, rents, compensation, and fines, after defraying thereout all charges incurred in carrying out this Act in those territories, shall be credited to the fund constituted for those territories by the North-Western Provinces Local Rates Act, 1878 ;

(*b*) in the territories administered by the Chief Commissioner of Oudh, the residue as aforesaid shall be credited to the fund constituted for those territories by the Oudh Local Rates Act, 1878 ;

(*c*) in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of the Central Provinces, such tolls, rents, compensation, and fines shall be credited to the Local Government, and applied, " in the first instance,"‡ to defraying all charges incurred in carrying out this Act in those territories respectively, " and shall then, at the discretion of the Local Government—

(*i*) be placed at the disposal of any district board or district boards established under the Punjab District Boards Act, 1883, or,

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* The word " lease " has been substituted for the original word by Act III. of 1886, s. 1 (*3*).

† This reference has been inserted by Act XIV. of 1883, s. 65.

‡ In cl. *c*, the words quoted have been substituted for the word " first " by Act XII. of 1891, Sch. II.

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(*ii*) be applied to any of the purposes specified in the second clause of section 5 of the Central Provinces Additional Rates Act, 1878,

as the case may be; and"*

(*d*) in the territories respectively administered by the Chief Commissioner of Assam and the Chief Commissioner of Ajmere and Merwara, such tolls, rents, compensation, and fines shall be credited to the Local Government and applied, first, to defraying all charges incurred in carrying out this Act in those territories respectively, and then to such local works and establishments likely to promote the public health, comfort, or convenience as the Local Government, subject to the control of the Governor-General in Council, may from time to time direct.

Compounding for tolls.

18. The Local Government may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

III.—Private Ferries.

Power to make rules.

19. The Commissioner of the division may, with the previous sanction of the Local Government, from time to time make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

Tolls.

20. The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries.

IV.—Penalties and Criminal Procedure

Penalty for breach of provisions as to table of tolls, list of tolls, and return of traffic.

21. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16,

or who wilfully removes, alters, or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12,

shall be punished with fine which may extend to fifty rupees.

Penalty for taking unauthorized tolls, and for causing delay.

22. Every such lessee or other person as aforesaid, and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle, or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for breach of rules made under sections 12 and 19.

23. Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

* The words and figures quoted have been substituted for the original words and figures by Act XII. of 1891, Sch. II.

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Cancelment of lease on default or breach of rules.

24. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23 or having been convicted of an offence under section 21 or section 22, is again convicted of an offence under either of those sections,

the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

25. Every person crossing by any public ferry, or using the approach to or landing-place thereof, who refuses to pay the proper toll; and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee, or assistant not to do so, goes or takes any animals, vehicles, or other things into any ferry-boat, or upon any bridge, at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles, or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee, or assistant to do so,

shall be punished with fine which may extend to fifty rupees.

Penalty for maintaining private ferry within prohibited limits.

26.* Whoever establishes, maintains, or works a ferry in contravention of the provisions of section 13, shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions.

Fines payable to lessee.

27. Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realized under section 25 or section 26 may, notwithstanding anything contained in section 17, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

28. Whoever navigates, anchors, moors, or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft, or timber pending the enquiry and assessment hereinafter mentioned.

Power to arrest without warrant.

29. The police may arrest without warrant any person committing an offence against section 25 or section 28.

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* S. 26 has been substituted for the original by Act III. of 1886, s. 2 (3).

Act XVII. of 1878.

Power to try summarily.

30. Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XXII. of the Code of Criminal Procedure, 1882,* may try any offence against this Act in manner provided by that chapter.

Magistrate may assess damage done by offender.

31. Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft, or timber causing the damage, and of any thing found in or upon such vessel or raft.

The Commissioner of the division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

V.—Miscellaneous.

Power to take possession of boats, &c., on surrender or cancellation of lease.

32. When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment, and all other materials and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the Local Government may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

Similar power in cases of emergency.

33. When any boats or their equipment, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles, or baggage belonging to such officers, troops, or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the Local Government may in each case direct) until such transport is completed.

Jurisdiction of Civil Courts barred.

34. No suit to ascertain the amount of any compensation payable or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

Delegation of powers.

35. The Local Government may, from time to time, delegate, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

36. [*Validation of proceedings since repeal of Regulation VI. of 1819 in the Punjab.*] *Repealed by Act XII. of 1891, Sch. I.*

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* The reference to Chapter XVIII. of Act X. of 1872 has been altered in accordance with Act X. of 1882, s. 3.

ACT I. OF 1879.*

Act I. of 1879.

GENERAL STAMP ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH JANUARY 1879.

An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Stamp Act, 1879:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the first day of April, 1879.

Saving of things done under former Act.

2.† All rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Banker."

(1.) "Banker" includes a bank and any person acting as a banker:

"Bill of exchange."

(2.) "Bill of Exchange" includes a hundi:

"Bill of lading."

(3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated:

"Bond."

(4.) "Bond" means—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable."

(5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument chargeable under the law in force in British India, when such instrument was executed, or, where several persons executed the instrument at different times, first executed:

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* Act I. of 1879 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, *viz.*, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., pp. 507 to 510.

† Certain words, repealed by Act XII. of 1891, have here been omitted.

Act I. of 1879.

"Cheque." (6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand:

"Chief Controlling Revenue Authority." (7.) "Chief Controlling Revenue Authority," means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, "and the Chief Commissioner of Oudh,"* the Board of Revenue; in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner; in Sind, the Commissioner; in the Punjab, the Financial Commissioner; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Collector." (8.) "Collector" means, within the limits of the towns of Calcutta, Madras, and Bombay, the Collector of Calcutta, Madras, and Bombay, respectively, and without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Conveyance." (9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale:

"Duly stamped." (10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

"Instrument of partition." (11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue Authority:

"Lease." (12.) "Lease" means a lease of immoveable property, and includes also—

(*a*) a pattá,

(*b*) a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy, or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

"Mortgage-deed." (13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property:

"Paper." (14.) "Paper" includes vellum, parchment, or any other material on which an instrument may be written:

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* The words quoted have been inserted by Act XX. of 1890, s. 38.

It includes also a policy of sea-insurance, such a policy (a) meaning any insurance made upon any ship or vessel or upon the machinery, tackle or furniture of any ship or vessel or upon any goods merchandise or property of any description whatever on board of any ship or vessel or upon the freight of or any other interest which may be lawfully insured in or relating to any ship or vessel and (b) including any insurance of goods merchandise or property for any transit which includes, not only a sea risk but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance:

and where any person, in condn of any sum of money paid or to be paid for additional freight or otherwise agrees to take upon himself any risk attending goods merchandise or property of any description whatever while on board of any ship or vessel or engages to indemnify the owner of any such goods merchandise or ppty from any risk loss or damage, such agreement or engagement shall be deemed to be a contract for marine insurance.

Addition by sec 1 of Act VI of 1894 to clause (15) of sec. 3.

"Policy of insurance."

(15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event:

It includes a life-policy, and includes also any writing evidencing the renewal of, for the purpose of keeping in force, a policy of fire-insurance in respect of which, and of the previous renewal whereof (if any), there has not already been paid the stamp-duty which would have been chargeable if the policy had originally been granted for a longer term than six months:* see for addition here Act 1894

"Power-of-attorney."

(16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to court-fees† for the time being in force) empowering a specified person to act in the stead of the person executing it:

"Receipt."

(17.) "Receipt" means any note, memorandum, writing, or advertisement, whereby any money or any bill of exchange, cheque, or promissory note, is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person:

"Schedule."

(18.) "Schedule" means a schedule to this Act annexed:

"Settlement."

(19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition:

"Vessel."

(20.) "Vessel" means anything made for the conveyance by water of human beings or property:

"Written," "Writing."

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

"Schedules to be read as part of Act."

4. The schedules and everything therein contained shall be read and construed as part of this Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

Instruments chargeable with duty.

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say—

* This clause has been substituted by Act I. of 1888, s. 1.

† See Act VII. of 1870.

Act I. of 1879.

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April 1879;

(*b*) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

Several instruments used in single transactions.

6. Where, in the case of any sale, lease, mortgage, or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage, or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee, instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

Instruments relating to several distinct matters.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments coming within several descriptions in Schedule I.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty, and in respect of which the proper duty has been paid.

Power to reduce or remit duty.

8. The Governor-General in Council may, by order published in the *Gazette of India*,

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments, belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) cancel or vary such order to the extent of the powers hereby given

B.—Of Stamps and the mode of using them.

Duties how to be paid.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments by means of stamps—

(*a*) according to the provisions herein contained, or

(1) No contract for sea insurance (other than such insurance as is referred to in sec. 55 of the Merchant Shipping Act Amendment Act 1862) shall be valid unless the same is expressed in a policy of sea insurance.

(2) No policy of sea insurance made for time shall be made for any time exceeding twelve months

(3) No policy of sea insurance shall be valid unless it specifies the particular risk or adventure or the time, for which it is made, the names of the subscribers or underwriters & the amount or amounts insured.

(4) Where any insurance is made for or upon a voyage and also for time or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination & been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage and also with duty as a policy for time.

Addition by sec. 2 of Act 6 of 1894

7B. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act 1879, or of any other law for the time being in force, by the issue of bonds, debentures, or other certificates, shall, in respect of such loan, be chargeable with a duty of eight annas per centum on the total amount of the bonds, debentures, or other certificates issued by it, or such bonds, debentures or

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or other certificates need not be stamped & shall not be chargeable with any further duty on renewal, consolidation, subdivision or otherwise.

(2) The provisions of subsection (1) exempting certain bonds, debentures or other certificates from being stamped & from being chargeable with certain further duty, shall apply to the bonds, debentures or other certificates of all outstanding loans of the kinds mentioned therein, & all such bonds, debentures or other certificates shall be valid whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other certificates from the duty chargeable in respect thereof prior to the 26th day of March 1897, where such duty has not already been paid or remitted by order issued under this Act.

(*b*) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct. Act I. of 1879.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.

Use of adhesive stamps.

10. The following instruments may be stamped with adhesive stamps, namely :—

(*a*) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;

(*b*) bills of exchange, cheques, and promissory notes drawn or made out of British India ;

(*c*) entry as an advocate, vakil, or attorney on the roll of a High Court ;

(*d*) notarial acts ; and

(*e*) transfers by endorsement of shares of public Companies and Associations.

Cancellation of adhesive stamps.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again ;

and whoever executes any instrument on any paper bearing an adhesive stamp shall at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

How instruments stamped with impressed stamps are to be written.

12. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument.

Only one instrument to be on same stamp.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written : provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 12 or 13 deemed unstamped.

14. Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped.

Denoting duty.

15. Where the duty with which an instrument is chargeable, or its exemption from duty depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to

Act I. of 1879.

the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor-General in Council may by rule prescribe.

C.—Of the time of Stamping Instruments.

Instruments executed in British India.

16. All instruments chargeable with duty, and executed by any person in British India, shall be stamped before or at the time of execution.

Instruments other than bills, cheques, and notes executed out of British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque, or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe with a stamp of such value as the person so taking such instrument may require and pay for.

Bills, cheques, and notes drawn out of British India.

18. The first holder in British India of any bill of exchange, cheque, or promissory note drawn or made out of British India, shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same:

Provided that, if, at the time, any such bill, cheque, or note, comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto, and cancelled in manner prescribed by section 11, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

Conversion of amount expressed in certain currencies.

19. Where an instrument is chargeable with *ad-valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

One pound sterling or pound currency is equivalent to ten rupees:

One hundred francs are equivalent to forty rupees:

One Mexican or China dollar is equivalent to two rupees four annas.

Conversion of amount expressed in other foreign currencies.

20. Where an instrument is chargeable with *ad-valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Stock and marketable securities how to be valued.

21. Where an instrument is chargeable with *ad-valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

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22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable, had no mention of interest been made therein.

Instruments reserving interest.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock, is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad-valorem* duty.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

Valuation in case of annuity, &c.

(*a*) where the sum is payable for a definite period, so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad-valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Stamp where value of subject-matter is indeterminate.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

28. (*a*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so

Direction as to duty in case of certain conveyances.

Act I. of 1879.

that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad-valorem* duty, in respect of such distinct consideration.

(*b*) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad-valorem* duty in respect of the distinct part of the consideration therein specified.

(*c*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad-valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad-valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad-valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(*e*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad-valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or, where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57, and 60 (*a*) and (*b*) of the first schedule—by the person drawing, making, or executing such instrument:

(*b*) in the case of a policy of insurance—by the insured:

(*c*) in the case of a conveyance—by the grantee; in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or, when the partition is made in execution of an order passed by a Revenue Authority, in such proportion as such Authority directs;

(*f*) in the case of an instrument of exchange—by the parties in equal shares; and Act I. of 1879.

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees, and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable;

Adjudication as to proper stamp.

and may, for that purpose, require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Collector may call for abstract and evidence.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Proviso.

31. When an instrument brought to the Collector under section 30 is, in his opinion, one of a description chargeable with duty, and

Certificate by Collector.

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section 30, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify, by endorsement on such instrument, that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify, in manner aforesaid, that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

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any instrument executed or first executed in British India, and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India, and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under section 30 how made.

32. Every payment of a fee under section 30 shall be made in stamps or cash, as the Governor-General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having, by law or consent of parties, authority to receive evidence, and

every person in charge of a public office, except an officer of police,

before whom any instrument chargeable, in his opinion, with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter 40* or chapter 41† of the Code of Criminal Procedure,‡ or chapter 18† of the Presidency-Magistrates' Act:

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may, from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, &c.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Proviso.

Provided that—

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* Corresponding with Chap. XII. (Disputes as to Immoveable Property) of Act X. of 1882.

† Corresponding with Chap. XXXVI. (Maintenance of Wives and Children) of Act X. of 1882.

‡ See Act X. of 1882, s. 3.

1st, any such instrument, not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

Instruments admissible on payment of duty and penalty,

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under chapter 40* or chapter 41† of the Code of Criminal Procedure,‡ or chapter 18† of the Presidency Magistrates Act;

and in certain criminal proceedings.

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in question at any stage of the same suit or proceeding, on the ground that the instrument has not been duly stamped.

Admission of instrument not to be questioned.

35. When the person impounding an instrument under section 33 has, by law or consent of parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

Instruments impounded how dealt with.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section 35, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or,

Collector's power to refund penalty paid under section 35, 1st para.

when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall adopt the following procedure:—

Collector's power to stamp instruments impounded.

(*a*.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify, by endorsement thereon, that it is duly stamped, or that it is not so chargeable (as the case may be), and shall, upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct;

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* Corresponding with Chap. XII. (Disputes as to Immoveable Property) of Act X. of 1882.

† Corresponding with Chap. XXXVI. (Maintenance of Wives and Children) of Act X. of 1882.

‡ See Act X. of 1882, s. 3.

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(*b*.) If the Collector is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty, or the amount required to make up the same, together with a penalty of five rupees: or, if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees, and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Instruments unduly stamped by accident.

38. If any instrument chargeable with duty, and which is not duly stamped, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 37, receive such amount, and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Endorsement of instruments on which duty has been paid under section 34, 37, or 38.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 37, or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify, by endorsement thereon, that the proper duty, or (as the case may be) the proper duty and penalty (stating the amount of each), have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary, and has not cancelled such certificate:

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.*

Prosecution for offence against stamp-law.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

* See Act XIV. of 1882, s. 3.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty is paid, under section 34, section 37, or section 38, by any person in respect of an instrument, and by agreement, or under the provisions of section 29, or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section 39 shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section 34 or 37, the Chief Controlling Revenue Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section 35 be lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person, and authenticated by the person impounding such instrument.

Copy may be made of instruments so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note, or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note, or cheque, shall, so far as respects the duty, be deemed good and valid.

Power of payee to stamp bills, notes, and cheques received by him unstamped.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note, or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector, acting under section 30, section 37, or section 38, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority, and such Authority shall consider the case, and send a copy of its decision to the Col-

Procedure where Collector feels doubt as to duty chargeable.

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lector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Reference by Revenue Authority to High Court.

46. The Chief Controlling Revenue Authority may state any case referred to it under section 45, or otherwise coming to its notice, and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab—to the Chief Court of the Punjab: if it arises in the Central Provinces—to the High Court of Judicature at Bombay: and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and, in case of difference, the opinion of the majority shall prevail.

Power of Court to call for further particulars.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Procedure in disposing of reference.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon, containing the grounds on which such decision is founded; and it shall send to the Revenue Authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

49. If any Court other than a Court mentioned in section 46 feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section 34, the Judge may draw up a statement in the case, and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue Authority, he would, under section 46, refer the same; and such Court shall deal with the case as if it had been referred under section 46, and send a copy of its judgment, under the seal of the Court and the signature of the Registrar, to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court; and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court, to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such

order into consideration ; and, if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person, in whose possession or power such instrument then is, to produce the same, and may impound the same when produced. Act I. of 1879.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument ; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law, which the Collector considers him to have committed in respect of such instrument :

Provided that no such prosecution shall be instituted where the amount (including duty and penalty), which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty :

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

Allowance for spoiled stamps.

51. Subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

(*a*) The stamp on any paper inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person :

(*b*) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee and, provided that the paper on which any such stamp is impressed does not bear any signature, intended as or for the acceptance of any bill of exchange or cheque, to be afterwards written thereon :

(*c*) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by, or on behalf of, the drawer thereof, but which, from any omission or error, has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance, or accepted or endorsed, or, being a promissory note, may have been delivered to the payee : provided that another completed and duly-stamped bill of exchange, cheque, or promissory note, is produced, identical in every par-

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ticular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque, or note :

(*d*) The stamp used for any of the following instruments, that is to say—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning :

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :

(4) an instrument executed by any party thereto, which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is, in fact, incomplete and insufficient for the purpose for which it was intended :

(5) an instrument executed by any party thereto, which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :

(6) an instrument executed by any party thereto, which becomes useless in consequence of the transaction intended to be thereby effected, being effected by some other instrument duly stamped :

(7) an instrument executed by any party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument—

(*a*) such instrument is given up to be cancelled :

(*b*) the application for relief is made within six months after the date of the instrument; or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument, for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument; and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Allowance for misused stamps.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered use-

less under section 14, owing to such instrument having been written in contravention of the provisions of section 12, the Collector may, on application made within six months after the date of the instrument, or, if it is not dated within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance under sections 51 and 52 how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or (*c*), at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for stamps not required for use.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ-fide* intention to use it; and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Powers to make rules relating to sale of stamps.

55. The Local Government, subject to the control of the Governor-General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

56. The Governor-General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Certain powers exerciseable from time to time.

57. All powers to make appointments, rules, and orders conferred by this Act may be exercised from time to time as occasion requires.

Publication of rules.

All rules made under this Act, other than rules made under section 55, shall be published in the *Gazette of India*, and all rules made under section 55 shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Obligation to give receipt in certain cases.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque, or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note, or property, give a duly-stamped receipt for the same.

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Saving as to court-fees.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.*

Act to be translated, indexed, and sold cheaply.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, &c., instrument not duly stamped.

61. Any person drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating, any bill of exchange, cheque, or promissory note, without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall, for every such offence, be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37, or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed, under this section, in respect of the same instrument, upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

62. Any person required by section 11 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

64. Any person who, being required under section 58 to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty upon a payment of money or delivery of property exceed-

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* See Act VII. of 1870.

ing twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy,

65. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving or taking credit for such premium or consideration, make out and execute a duly-stamped policy of such insurance; or

(*b*) makes, executes, or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

or making, &c., any policy not duly stamped.

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes, or issues, any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for post-dating bills, &c., and

and whoever, with the like intent, practises, or is concerned in any act contrivance, or device not specially provided for by this Act or any other law for the time being in force,

for other devices to defraud the revenue.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869,* or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

The Chief Controlling Revenue Authority, or any officer authorized by it in this behalf, may stay any such prosecution, or compound any such offence.

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* Repealed by this Act, s. 2, and sch. iii.

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Jurisdiction of Magistrates.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Place of trial.

71. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.*

Operation of other laws not barred.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

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* See now Act X. of 1882.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession	One anna.
2. ADMINISTRATION-BOND, "including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889"*	The same duty as a Security-Bond (No. 14).
ADOPTION-DEED. See *Instrument*, No. 38.	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath	One rupee.
See *Exemptions*, Schedule II. (No. 1).	
4. AGREEMENT TO LEASE	The same duty as a Lease (No. 39).

* The words quoted have been added by Act VI. of 1889, s. 18.

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SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT	(*a.*) If relating to the sale of any Government Security, Share in a Company or Association, or Bill of Exchange.	One anna.
	(*b.*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights* therein to the Government, and to accept rights in other land in exchange for the rights so relinquished ...	Four annas.
	(*c.*) If not otherwise provided for by this Act, ...	Eight annas.
See *Exemptions*, Schedule II. (No. 2).		
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will ...	... ...	Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit ...	... ...	The same duty as an Award (No. 10).
See *Exemptions*, Schedule II. (Nos. 3 and 4).		
APPRENTICESHIP-DEED ...	See *Instrument*, No. 31.	
8. ARTICLES OF ASSOCIATION OF A COMPANY ...	... ...	Twenty-five rupees.
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court	... ...	Two hundred and fifty rupees.

* The word "rights" has been substituted for the word "right" by Act XII. of 1891.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
ASSIGNMENT ...	See *Conveyance*, No. 21, and *Transfer*, No. 60.	
AUTHORITY TO ADOPT	See *Instrument*, No. 38.	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit ...	(*a.*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ...	The same duty as a Bond (No. 13) for such amount.
	(*b.*) In any other case ...	Five rupees.
See *Exemption*, Schedule II. (No. 6).		
	(*a.*) When payable on demand, and the amount exceeds Rs. 20	One anna.

		If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.		
	(*b.*) When payable otherwise than on demand, but not more than one year after date or sight.									
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note, or currency-note ...		Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
	If the amount of the bill or note does not exceed ... 200	0	2	0	0	1	0	0	1	0
	If it exceeds 200 and does not exceed 400	0	4	0	0	2	0	0	2	0
	,, 400 600	0	6	0	0	3	0	0	2	0
	,, 600 1,000	0	10	0	0	5	0	0	4	0
	,, 1,000 1,200	0	12	0	0	6	0	0	4	0
	,, 1,200 1,600	1	0	0	0	8	0	0	6	0
	,, 1,600 2,500	1	8	0	0	12	0	0	8	0
	For every Rs. 2,500 or a part thereof in excess of Rs. 2,500 up to Rs. 10,000	1	8	0	0	12	0	0	8	0
	For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000	3	0	0	1	8	0	1	0	0
	And for every Rs. 10,000 or part thereof in excess of Rs. 30,000	6	0	0	3	0	0	2	0	0

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SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note, or currency-note (*concld.*)	(*c.*) When payable at more than one year after date or sight	The same duty as a Bond (No. 13) for the amount of such bill or note.
12. BILL OF LADING		Four annas.
See *Exemption*, Schedule II. (No. 7).		If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
13. BOND (not otherwise provided for by this Act, "or by the Court-fees Act, 1870."*) ...	When the amount or value secured does not exceed Rs. 10	Two annas.
	When such amount or value exceeds Rs. 10, but does not exceed ... 50	Four annas.
See *Administration-Bond* (No. 2), *Customs-Bond* (No. 24), *Indemnity-Bond* (No. 28), *Security-Bond* (No. 34).	When such amount or value exceeds Rs. 50, but does not exceed ... 100	Eight annas.
See *Exemptions*, Schedule II. (No. 8).	and for every Rs. 100 or part thereof in excess of Rs. 100 up to ... 1,000	Eight annas.
	and for every Rs. 500 or part thereof in excess of ... 1,000	Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof	(*a.*) When the amount secured does not exceed ... 1,000	The same duty as a Bond (No. 13).
	(*b.*) In any other case ...	Five rupees.
See *Exemptions*, Schedule II. (Nos. 8 and 12).		

* The words quoted have been added by Act VI. of 1889, s. 18.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 3.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage	The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money only.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip, or stock in or of any Company or Association, or to become proprietor of shares, scrip, or stock in or of any Company or Association	One anna.
18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer	One rupee.
19. CHEQUE, for an amount exceeding twenty rupees	One anna.

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors		Ten rupees.
21. CONVEYANCE, not being a TRANSFER mentioned in No. 60.	When the amount of the consideration for such conveyance as set forth therein does not exceed 50	Eight annas.
	When it exceeds Rs. 50, but does not exceed 100	One rupee.
See *Exemptions*, Schedule II. (Nos. 5 and 17).	For every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	One rupee.
	and for every Rs. 500 or part thereof in excess of ... 1,000	Five rupees.
CO-PARTNERSHIP	See *Instrument*, No. 32.	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer, and not chargeable under the law for the time being in force relating to Court-fees.*	(*a.*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ...	Eight annas.
	(*b.*) In any other case...	One rupee.

* See Act VII. of 1870.

SCHEDULE I.—(*continued*). Act I. of 1879.

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
See *Exemptions*, Schedule II. (Nos. 9 and 10).		
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid	(*a.*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b.*) In any other case ...	One rupee.
24. CUSTOMS-BOND...		The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a Will		Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees		One anna.
DEPOSIT OF TITLE-DEEDS ...	See *Instrument*, No. 29.	
DISSOLUTION OF PARTNERSHIP	See *Instrument*, No. 33.	
DUPLICATE ...	See *Counterpart*, No. 23.	

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent, "or by the Legal Practitioners Act, 1884."*	In the case of an Advocate or Vakil ...	Five hundred rupees.
	In the case of an Attorney	Two hundred and fifty rupees.
See *Exemptions*, Schedule II. (No. 11).		
EXCHANGE ...	See *Instrument*, No. 35.	
EXTRACT	See *Copy*, No. 22.	
FURTHER CHARGE... ...	See *Instrument*, No. 30.	
GIFT	See *Instrument*, No. 36.	
28. INDEMNITY-BOND		The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED	See *Composition-deed*, No. 20.	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	(*a*.) When such loan is repayable more than three months, but not more than one year, from the date of such instrument.	The same duty as a Bill of Exchange [No. 11 (*b*)] for the amount secured.
	(*b*.) When such loan is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange [No. 11 (*b*)] for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(*a*.) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.
	(*b*.) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule.	The same duty as a Bond (No. 13) for the amount secured by such instrument.

* The words quoted have been added by Act IX. of 1884, s. 10 (*1*). For stamp-duties on certificates to practise as a legal practitioner, see Act XVIII. of 1879, s. 25, and sch. ii.

SCHEDULE I.—(*continued*). Act I. of 1879.

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
31. INSTRUMENT OF APPRENTICESHIP including every writing relating to the service or tuition of any apprentice, clerk, or servant, placed with any master to learn any profession, trade, or employment, except articles of clerkship (No. 9 of this schedule)	Five rupees.
See *Exemption*, Schedule II. [No. 12 (c)].	
32. INSTRUMENT OF CO-PARTNERSHIP	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP	Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee.
35. INSTRUMENT OF EXCHANGE of any property	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
37. INSTRUMENT OF PARTITION		The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT		Ten rupees.
INSURANCE	...See *Policy*, No. 4	
39. LEASE, See *Agreement to lease* (No. 4). See *Exemptions*, Schedule II. (No. 13).	(*a.*) Where, by such lease, the rent is fixed and no premium is paid or delivered, and such lease purports to be for a term— of less than one year...	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years ...	The same duty as a Bond (No. 13) for the average annual rent reserved.
	exceeding three years...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.
	(*b.*) Where by such lease the rent is fixed, and no premium is paid or delivered, and such lease does not purport to be for any definite term ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

SCHEDULE I.—(*continued*). Act I. of 1879.

STAMP DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
39. LEASE—*concld.*	(*c.*) Where the lease is granted for a fine or premium, and where no rent is reserved	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
See *Agreement to lease* (No. 4).	(*d.*) Where the lease is granted for a fine or premium in addition to rent reserved ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered:
See *Exemptions*, Schedule II. (No. 13).		Provided that, when an agreement to lease is stamped with the *ad-valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
40. LETTER OF ALLOTMENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company		One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn		One anna.

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims, and allow the debtor to carry on business at his own discretion	... ...	Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY...	... ...	Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29, or No. 55 of this schedule	(*a*.) When, at the time of execution, possession of the property, or any part of the property comprised in such deed, is given by the mortgagor, or agreed to be given.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
See *Exemptions*, Schedule II. [No. 12 and No. 14 (*b*)].	(*b*.) When, at the time of execution, possession is not given, or agreed to be given, as aforesaid.	The same duty as a Bond (No. 13) for the amount secured by such deed.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate, or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public	... ...	One rupee.
46. NOTE OR MEMORANDUM, sent by a Broker or Agent to his principal, intimating the purchase or		

For clause (a) of article 49

Description of Property	Proper Stamp Duty Rs. as. p.
(a) In the case of sea-insurance	
1. for or upon any voyage —	
(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy.	0-1-0
(ii) in any other case, in respect of every full sum of one thousand rupees & also any fractional part of one thousand rupees insured by the policy	0-2-0
2. for time	
(iii) in respect of every full sum of one thousand rupees & also any fractional part of one thousand rupees insured by the policy —	
where the insurance shall be made for any time not exceeding six months	0-2-0
where the insurance shall be made for any time exceeding six months & not exceeding twelve months	0-4-0

Policy of insurance

Amended by section 3 of Act 6 of 1894

(c) [illegible]

(i) [illegible] 0-1-0

(ii) [illegible] 0-2-0

(iii) [illegible] 0-2-0

[illegible] 0-2-0

SCHEDULE I.—(*continued*). Act I. of 1879

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.	
sale on account of such principal of any goods, stock, or marketable security exceeding in value twenty rupees		One anna.	
47. NOTE OF PROTEST BY THE MASTER OF A SHIP		Eight annas.	
PARTITION ... See *Instrument*, No. 37.			
PARTNERSHIP ... See *Instrument*, Nos. 32 and 33.			
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India.*	[This article has been repealed by the Inventions and Designs Act (V. of 1888), s. 2 and schedule.]	One hundred rupees.	
		If drawn singly.	If drawn in duplicate, for each part.
49.† POLICY OF INSURANCE ...	(*a.*) In the case of sea-insurance—	Rs. A. P.	Rs. A. P.
	When the amount insured does not exceed Rs. 1,000	0 4 0	0 2 0
	And for every further sum of Rs. 1,000 or part thereof in excess of ... 1,000	0 4 0	0 2 0
See *Exemption*, Schedule II. [*No.* 14 (*a*)].			

* See Act XV. of 1859, ss. 1 and 4.

† No. 49 has been substituted by Act I. of 1888, s. 2. This Act has been extended to Upper Burma (except the Shan States) under s. 5 of the Scheduled Districts Act (XIV. of 1874).—See *Burma Gazette*, Aug. 4, 1883, Pt. I., p. 362, and *Gazette of India*, 11th idem, Pt. I., p. 371.

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
49. POLICY OF INSURANCE—*contd.*	(*b.*) In the case of fire-insurance—	
	i. In respect of an original policy for a month or any shorter term—	
	When the amount insured does not exceed Rs. 1,000	Rs. A. P. 0 2 0
	And for every further sum of Rs. 1,000 or part thereof in excess of ... 1,000	0 2 0
	ii. In respect of an original policy for more than one month, but not more than three months—	
	When the amount insured does not exceed ... Rs. 1,000	0 3 0
	And for every further sum of Rs 1,000 or part thereof in excess of ... 1,000	0 3 0
	iii. In respect of an original policy for more than three months, but not more than six months—	
	When the amount insured does not exceed Rs. 1,000	0 4 0

SCHEDULE I.—(*continued*).

Act I of 1879.

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
	And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000 ...	Rs. A. P. 0 4 0
	iv. In respect of an original policy for a longer term than six months—	
	When the amount insured does not exceed Rs. 1,000	0 6 0
	And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000 ...	0 6 0
49. POLICY OF INSURANCE—*contd.*	v. In respect of renewing, for the purpose of keeping in force, a policy which has been granted for six months or any shorter term, and in respect of which, and of the previous renewal whereof (if any), there has not already been paid the duty which would have been chargeable if the policy had originally been granted for a longer term than six months ...	The same duty as would be payable in respect of an original policy for the amount and term to which the renewal extends; or

Act I. of 1879.

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.	
		the excess of the duty which would have been chargeable if the policy had originally been granted for a longer term than six months, over the duty already paid in respect of the policy, and of the previous renewal thereof (if any); whichever is the smaller sum.	
		If drawn singly.	If drawn in duplicate, for each part.
49. POLICY OF INSURANCE—*concld.*	(*c.*) In the case of any other insurance— When the amount insured does not exceed Rs. 1,000	Rs. A. P. 0 6 0	Rs. A. P. 0 3 0
	And for every further sum of Rs. 1,000 or part thereof in excess of... 1,000	0 6 0	0 3 0
50. POWER OF ATTORNEY, not being a proxy chargeable under No. 51.	(*a.*) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction ...	Eight annas.	
	(*b.*) When authorizing one person or more to act in a single transaction other than that mentioned in (*a*)...	One rupee.	

SCHEDULE I.—(*continued*). Act I. of 1879.

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(*See section 5.*)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51 —*concluded* ...	(*c.*) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ...	Five rupees.
	(*d.*) When authorizing more than five, but not more than ten, persons to act jointly and severally in more than one transaction or generally ...	Ten rupees.
	(*e.*) In any other case ...	One rupee for each person authorized.
Explanation.—For the purposes of this number, more persons than one, when belonging to the same firm, shall be deemed to be one person.		
PROMISSORY NOTE...	See *Bill of Exchange*, No. 11.	
PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ...	See *Notarial Act*, No. 45.	
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading		

SCHEDULE I.—(*continued*).

STAMP-DUTY ON INSTRUMENTS—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ...	See *Notarial Act*, No. 45.	
51. PROXY empowering any person to vote at any one meeting of—		
(*a.*) Members of a Company whose stock or funds is or are divided into shares and transferable:		One anna.
(*b.*) Municipal Commissioners:		
(*c.*) Proprietors, Members, or Contributors to the funds of any Institution		
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES		One anna.
See *Exemptions*, Schedule II. (No. 15).		
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ...	(*a.*) If the consideration for which the property was mortgaged does not exceed Rs. 1,000	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the reconveyance.
	(*b.*) In any other case...	Ten rupees.

SCHEDULE I.—(*continued*). Act I. of 1879.

STAMP-DUTY ON INSTRUMENTS.—(*continued*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
54. RELEASE, that is to say any instrument whereby a person renounces a claim upon another person or against any specified property	(*a*.) If the amount or value of the claim does not exceed ... Rs. 1,000	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
	(*b*.) In any other case...	Five rupees.
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination		The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a Will		Ten rupees.
57. SETTLEMENT		The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel		One anna.
SPECIFICATION... See *Petition*, No. 48.		
59. SURRENDER OF LEASE ... ... See *Exemption*, Schedule II. (No. 16).	(*a*.) When the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
	(*b*.) In any other case ...	Five rupees.

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SCHEDULE I.—(*concluded*).

STAMP-DUTY ON INSTRUMENTS—(*concluded*).

(See section 5.)

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
	(*a.*) Of shares in a Company or Association	One-quarter of the duty payable on a Conveyance (No. 21).
	(*b.*) Of any interest secured by a Bond, Lease, Mortgage-deed, or Policy of Insurance—	...
60. TRANSFER. ...	1. If the duty on such Bond, Lease, Mortgage-deed, or Policy does not exceed five rupees ...	The duty with which such Bond, Lease, Mortgage-deed, or Policy of Insurance is chargeable.
See *Exemptions*, Schedule II. (No. 17).	2. In any other case ...	Five rupees.
	(*c.*) Of any property under the Administrator-General's Act, 1874, section 31 ...	Ten rupees.
	(*d.*) Of any trust-property from one trustee to another trustee without consideration ...	Five rupees.
TRUST	See *Declaration*, No. 25. *Revocation*, No. 56.	
VALUATION ...	See *Appraisement*, No. 7.	
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be ...	... ...	Four annas.

SCHEDULE II.

Act I. of 1879.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—

(*a*) as a condition of enlistment under the Indian Articles of War;

(*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or

(*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.

2. Agreement or memorandum of agreement—

(*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of Schedule I.;

(*b*) [*Repealed by Act XII. of 1891.*]

(*c*) made by raiyats for the cultivation of the poppy for Government;

(*d*) made in the form of tenders to the Government of India for or relating to any loan;

(*e*) [*Repealed by Act XII. of 1891.*]

(*f*) made under the European Vagrancy Act, 1874, section 17.

3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

5. Assignment of copyright by entry made under Act No. XX. of 1847, section 5.

6. Award under Bombay Act VI. of 1873, section 81, or Bombay Act III. of 1874, section 18.

7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

8. Bond when executed by—

(*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;

(*b*) headmen nominated under rules framed in accordance with Bengal Act III. of 1876, section 99, for the due performance of their duties under that Act;

(*c*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

10. [*Repealed by Act XII. of 1891.*]

Act I. of 1879.

SCHEDULE II.—(*continued*).

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—(*continued*).

11. Entry—

(*a*) of an advocate, vákil, or attorney, on the roll of any High Court, when he has previously been enrolled in a High Court; *

(*b*) [*Repealed by Act XII. of 1891.*]

12. Instruments—

(*a*) executed by persons taking advances under the Land Improvement Act, 1871,† or by their sureties, as security for the repayment of such advances;

(*b*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;

(*c*) of apprenticeship executed by a Magistrate under Act XIX. of 1850, or by which a person is apprenticed by or at the charge of any public charity.

13. Leases and counterparts—

(*a*) Leases of fisheries granted under the Burma Fisheries Act, 1875.

(*b*) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed, and such term does not exceed one year, or when the average‡ annual rent reserved does not exceed one hundred rupees;

(*c*) Counterpart of any lease granted to a cultivator.

14. Letter—

(*a*) of cover or engagement to issue a policy of insurance:

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned;

(*b*) of hypothecation accompanying a bill of exchange.

15. Receipt—

(*a*) endorsed on or contained in any instrument duly stamped or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest, or annuity, or other periodical payment thereby secured;

(*b*) for any payment of money without consideration;

(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;

(*d*) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;

(*e*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;

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* The words, "established by Royal Charter," have been repealed by Act IX. of 1884, s. 10 (2).

† Or, where the Land Improvement Loans Act, 1883, is in force, under that Act. See Act XIX. of 1883, ss. 1 and 2.

‡ The word "average" has been inserted by Act XII. of 1891.

SCHEDULE II.—(*concluded*).

Act I. of 1879.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—(*concluded*).

(*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;

(*g*) given by a headman or lambardár for land-revenue or taxes collected by him;

(*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:

Provided, also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

(*a*) of a bill of exchange, cheque, or promissory note;

(*b*) of a bill of lading;

(*c*) of a policy of insurance;

(*d*) of mortgages of rates and taxes authorized by any Act for the time being in force in British India;

(*e*) of securities of the Government of India;

(*f*) of a warrant for goods (No. 61 of Schedule I.).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

[*Repealed by Act XII. of 1891.*]

Acts II. & III. of 1879.

ACT II. OF 1879.†

THE CENTRAL PROVINCES LAWS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH FEBRUARY 1879.

An Act to make better Provision for recording Evidence in the Central Provinces.

Preamble.

WHEREAS, in order to provide for the recording of evidence in civil suits in the Central Provinces by the Judge in English or in his own language, it is expedient to amend the Central Provinces Laws Act, 1875; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Central Provinces Laws Act, 1879;"

And it shall come into force at once.

Addition to Act XX. of 1875.

2. The following sections shall be deemed to have been added to the said Central Provinces Laws Act, 1875, immediately after the Code of Civil Procedure* came into force, that is to say:—

11. [*Printed supra, p. 11.*]

12. [*Printed supra, p. 11.*]

ACT III. OF 1879.†

THE DESTRUCTION OF USELESS RECORDS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1879.

An Act to authorize the Destruction of Useless Records.

Preamble.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books, and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

Short title, Local extent, Commencement.

1. This Act may be, called "The destruction of Records Act, 1879:" it extends to the whole of British India; and it shall come into force at once.

Power to High Court to make rules for disposal of records, &c.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books, and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil

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* This reference to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See the latter Act, s. 3.

† Act III. of 1879 has been declared, under the Scheduled Districts Act (XIV. of 1882), to be in force in the following Scheduled Districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court. Act III. of 1879.

Similar power to Presidency High Courts with respect to documents in Insovency Courts and Administrator-General's Office.

3. Each of the High Courts of Judicature at Fort William, Madras, and Bombay, may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books, and papers belonging to or being in the custody of

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(*b*) the local Administrator-General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-Authority.

4. The Chief Controlling Revenue Authority may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books, and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government, and sanctioned by the Governor-General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court, or a Chief Controlling Revenue-Authority for the destruction or other disposal of useless records, books, and papers belonging to or in the custody of any Court or Revenue-office, shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained, or continued against any person for the disposal, by destruction or otherwise, of any records, books, or papers in accordance with any such rules or with any order made by a Local Government, High Court, or Chief Controlling Revenue-Authority.

Bar of suits.

Interpretation-clause.

7. In this Act "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces "and the Chief Commissioner of Oudh" *—the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Punjab "and Burma" †—the Financial Commissioner: and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

Saving of documents kept under provision of law.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

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* In s. 7 the words quoted have been inserted by Act XX. of 1890. s. 38.

† In s. 7 the words quoted have been inserted by Act XVIII. of 1888, s. 7 and sch

Act V. of 1879.

9 [*Repeal of enactments.*] *Repealed by Act XII. of 1891, Sch. I.*

THE SCHEDULE.

Enactments repealed.

[*Repealed by Act XII. of 1891, Sch. I.*]

ACT V. OF 1879.*

THE PRESIDENCY BANKS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1879.

An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876 in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI. of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:—

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazànchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*mm*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

(*d*) [*See supra, p. 62.*]

* Act V. of 1879 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for," shall be substituted. Act VI. of 1879.

ACT VI. OF 1879.*

THE ELEPHANTS' PRESERVATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1879.

An Act for the Preservation of Wild Elephants.

Preamble.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Elephants' Preservation Act, 1879:".

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma, and Coorg;

and the Local Government may, with the previous sanction of the Governor-General in Council, extend it to any other local area by notification in the local official Gazette.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure, or capture, or attempt to kill, injure, or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

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* Act VI. of 1879 has been extended to the following places:—Killah Sukindah in Katak.—See *Calcutta Gazette*, March 15, 1882, Pt. I., p. 278. The District of Maimansingh.—See *Calcutta Gazette*, May 23, 1883, Pt. I., p. 416.

The Districts of Kámrup, Darrang, Sibságar, Lakhimpur, Káchár, the Nágá Hills, and the Khásí and Jaintíá Hills.—See *Assam Gazette*, July 10, 1880, p. 340.

The Gáro Hills (with the exceptions of certain portions of the estates of the zamindárs of Meshpára, Bijni, and Karaibári).—See *Assam Gazette*, Sep. 23, 1882, Pt. I., p. 453.

The Eastern Dvárs in the District of Goálpárá and that part of the District of Silhát which has not been permanently settled.—See *Assam Gazette*, Jan. 6, 1883, Pt. I., p. 2.

Act VI. of 1879.

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

4.* Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government

6. The Local Government may, from time to time, subject to the control of the Governor-General in Council,

to declare what are main roads and canals,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

and to make rules as to licenses.

make rules consistent with this Act for regulating—

(*a*) the grant and renewal of licenses under this Act,

(*b*) the fees (if any) in money, tusks, or captured elephants to be charged on such grant and renewal,

(*c*) the time during which such licenses shall continue in force; and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section 3, kills, injures, or captures, or attempts to kill, injure, or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void, and shall be delivered up to the convicting Magistrate.

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* S. 4 has been substituted by Act II. of 1883 (an Act to amend the Elephants' Preservation Act, 1879).

Act VIII. of 1879.

8. Any officer of revenue or police, or any forest-officer, who may find any person killing, injuring, or capturing, or attempting to kill, injure, or capture, any wild elephant, except in the cases mentioned in section 3, clauses (*a*) and (*b*), may require him to produce and show a license granted to him under this Act.

License to be produced and shown on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

ACT VIII. OF 1879.

THE NORTH-WESTERN PROVINCES LAND-REVENUE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD MAY 1879.

An Act to amend the North-Western Provinces Land-revenue Act, 1873, and the North-Western Provinces Local Rates Act, 1878.

Preamble.

WHEREAS it is expedient to amend the North-Western Provinces Land-revenue Act, 1873; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The North-Western Provinces Land-revenue Act, 1879;"

Commencement.

and shall come into force at once.

Local extent.

This section and sections 28 and 29 extend to the whole of the territories for the time being under the administration of the Lieutenant-Governor of the North-Western Provinces.

The whole of this Act extends to those portions of the said territories to which the whole of the said North-Western Provinces Land-revenue Act, 1873, extends; and every provision of this Act amending any part of the said North-Western Provinces Land-revenue Act, 1873, extends to all other portions of the said territories to which such part may have been, whether before or after the passing of this Act, extended.

Addition to s. 3, cl. 1, of Act XIX. of 1873.

2. To section 3, clause (1), of the said North-Western Provinces Land-revenue Act, 1873, the following shall be added:—

[See *Vol. I., p. 1125.*]

Amendment of same Act, s. 23.

3. In section 23 of the same Act, for the word "villages," the word "mahâls" shall be substituted.

Act VIII. of 1879.

4, 5. [*Repealed by Act XIII. of 1882.*]

6. In section 44 of the same Act, for the word "elected," the word "selected" shall be substituted; and to the same section the words, "such representatives shall be called lambardárs," shall be added.

Amendment of s. 44 of same Act.

Amendment of s. 65 of same Act.

7. In section 65 of the same Act, for clauses (*d*) and (*e*), the following shall be substituted :—

[See *Vol. I., p. 1136.*]

Amendment of s. 66 of same Act.

8. In section 66 of the same Act, for the second clause, the following shall be substituted :—

[See *Vol. I., p. 1136.*]

And to the same section, the following shall be added :—

[See *Vol. I., p. 1136.*]

Addition to s. 74 of same Act.

9. To section 74 of the same Act, the following shall be added :—

[See *Vol. I., p. 1138.*]

Amendment of s. 95 of same Act.

10. In section 95 of the same Act, for the words "no such changes" the words "no such change or other thing affecting proprietary rights or interests" shall be substituted.

Addition to s. 141 of same Act.

11. To section 141 of the same Act, the following shall be added :—

[See *Vol. I., p. 1147.*]

Addition to s. 146 of same Act.

12. To section 146 of the same Act, the following shall be added :—

[See *Vol. I., p. 1148.*]

Amendment of s. 156 of same Act.

13. In section 156 of the same Act, for the word "proprietor," the words "defaulter or his legal representative" shall be substituted.

New section substituted for s. 157 of same Act.

14. For section 157 of the same Act, the following shall be substituted :—

[See *Vol. I., p. 1150.*]

Addition to s. 165 of same Act.

15. To section 165 of the same Act, the following shall be added :—

[See *Vol. I., p. 1152.*]

Addition to s. 172 of same Act.

16. To section 172 of the same Act, the following shall be added :—

[See *Vol. I., p. 1153.*]

Addition to s. 189 of same Act.

17. To section 189 of the same Act, the following shall be added :—

[See *Vol. I., p. 1156.*]

Amendment of s. 193 of same Act.

18. In section 193 of the same Act, for the word "lands," the word "property" shall be substituted. **Act VIII. of 1879.**

Amendment of s. 194 of same Act.

19. In section 194 of the same Act, for the word "lands" the word "property," and for clause (*e*) the following, shall be substituted :—

[See *Vol. I., p. 1157.*]

New proviso substituted for proviso in s. 195 of same Act.

20. In section 195 of the same Act, for the proviso, the following shall be substituted :—

[See *Vol I., p. 1157.*]

Amendment of s. 200 of same Act.

21. In section 200 of the same Act, after the word "may," the following shall be inserted :—

[See *Vol. I., p. 1158.*]

Amendment of s. 203 of same Act.

22. In section 203 of the same Act, before the words "any part," the words "the whole or" shall be inserted :—

New section substituted for s. 205 of same Act.

23. For section 205 of the same Act, the following shall be substituted :—

[See *Vol. I, p. 1158.*]

New sections to follow s. 205 of same Act.

24. After section 205 of the same Act, the following sections shall be inserted :—

[See *Vol. I., p. 1159.*]

Amendment of s. 212 of same Act.

25. In section 212 of the same Act, after the word "suit," the words "or other proceeding" shall be inserted.

Amendment of s. 235 of same Act.

26. In section 235, clause (20), of the same Act, for the word "rent," where it first occurs, the word "limits" shall be inserted :—

Addition to s. 257 of same Act.

27. In section 257 of the same Act, after clause (*e*), the following clause shall be inserted :—

[See *Vol. I, p. 1169.*]

AND whereas it is also expedient to amend the North-Western Provinces Local Rates Act, 1878; It is hereby further enacted as follows :—

Definition of "tenant" in s. 3 of Act III. of 1878.

28. In section 3 of the said North-Western Provinces Local Rates Act, for the definition of "tenant," the following shall be substituted :—,

[See *supra, p. 230.*]

Amendment of s. 16 of same Act.

29. In section 16 of the same Act shall be substituted—

(*a*) for the words and figures "twenty-three of Act No. X. of 1859, and in section 1 of Act No. XIV. of 1863," the words and figures "ninety-three of the North-Western Provinces Rent Act, 1873"; and

(*b*) for the words and figures "Act No. X. of 1859 and Act No. XIV. of 1863," the words and figures "the North-Western Provinces Rent Act, 1873."

Act XI. of 1879.

ACT XI. OF 1879.

THE LOCAL AUTHORITIES LOAN ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JULY 1879.

The Local Authorities Loan Act, 1879.

Preamble.

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Local Authorities Loan Act, 1879:"

Local extent. Commencement.

It extends to the whole of British India, and shall come into force upon the passing thereof.

Repeal of Act XXIV. of 1871.

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans, and rules made under the said Act shall be deemed to have been made under this Act.

"Local authority."

3. In this Act, "local authority" means any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty, or tax upon any persons within any local area; and

"Funds."

"funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty, or tax which such authority is legally entitled to impose, and any property vested in such authority.

Loans for works may be granted on security of funds.

4. Any local authority, desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out, may, in manner provided by the rules made by the Governor-General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Power to Governor-General in Council to make rules.

5. The Governor-General in Council may from time to time make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made;

(2) the works for which loans may be made;

(3) the manner of making applications for loans;

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor-General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made; Act XI. of 1879.

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as the costs in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them;

(13) the accounts to be kept in respect of loans,

and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

Remedy by attachment if loan not repaid.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Attachment not to defeat prior charges legally made.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

Local Government may authorize parties to borrow from private persons under this Act.

7. The Local Government, with the previous sanction of the Governor-General in Council, may authorize any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section 6.

Power to make rules in regard to such loans.

The Governor-General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section 5, so far as the same may be applicable to the case of such loans.

Loans not to be effected except under this Act.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Act XII. of 1879.

Provided that nothing herein contained shall be deemed—

(*a*) to preclude the Municipality of Calcutta, Madras, or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force;

(*b*) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works;

(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.*

Application of Act to loans existing previous to the fifth of September, 1871.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section 6 for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money; and the Governor-General in Council or the Local Government may declare that any person who, before the said fifth day of September, 1871, has lent money to any local authority, shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

ACT XII. OF 1879.

RECEIVED THE G.-G.'s ASSENT ON THE 29TH JULY 1879.

An Act to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.†

1 *to* **103.** [*Repealed by Act XIV. of 1882, s. 3 and Sch. I.*]

AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act III. of 1877, section 35.

104. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing, or dead" shall be inserted.

Amendment of section 51.

105. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 83.

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

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* Cl. c. in s. 8 has been added by Act XV. of 1885.

† The portion of this Act which amends the Registration and Limitation Acts has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act XII. of 1879.

Amendment of section 89.

107. In section 89 of the same Act, for the words "the certificate," the words "the copy" shall be substituted, and to the same section the following paragraph shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate; and such officer shall file the copy in his Book No. 1."

AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act XV. of 1877, Schedule II.

108. In the second schedule to the said Indian Limitation Act, 1877,—

for No. 161, the following shall be substituted, namely:—

"161.—For the issue of a notice under section 258 of the same Code* to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days ...	When the payment or adjustment is made."

to No. 166, column one, the following words shall be added (namely): "or on the ground that the decree-holder has purchased without the permission of the Court;"

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's," the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted (namely):—

"171A.—Under section 366 of the same Code,* by the defendant.	Sixty days ...	The date of the plaintiff's death.
"171B.—Under section 368 of the same Code,* to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
"171C.—Under section 371 of the same Code,* for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified," the words "certain date) such date" shall be substituted.

* See Act XIV. of 1882, s. 3.

Act XIII. of 1879.

ACT XIII. OF 1879.

THE OUDH CIVIL COURTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH JULY 1879.

An Act to amend the Law relating to Civil Courts in Oudh.

Preamble. WHEREAS it is expedient to amend the law relating to Civil Courts in Oudh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Oudh Civil Courts Act, 1879:"

Local extent. It extends to all the territories for the time being administered by the Chief Commissioner of Oudh; and

Commencement. it shall come into force on the first day of August 1879.

2. [*Repeal of enactments.*] *Repealed by Act XIV. of 1891, s. 11 (2).*

"District" defined. **3.** In this Act, "district" means the area comprised in the local limits of the jurisdiction of the District Judge.

CHAPTER II.

CONSTITUTION OF COURTS.

Grades of Courts. **4.** Besides the Courts established under any other enactment for the time being in force, there shall be four grades of Civil Courts in Oudh (namely):—

(1) the Court of the Munsif;

(2) the Court of the Subordinate Judge;

(3) the Court of the District Judge;

(4) the Court of the Judicial Commissioner.

Number of Judges. **5.** The number of District Judges, Subordinate Judges, and Munsifs to be appointed under this Act shall be fixed and may, from time to time, be altered by the Local Government.

Appointment of officers under Act. **6.** The Judicial Commissioner shall be appointed by the Local Government, with the previous sanction of the Governor-General in Council.

The District Judges, Subordinate Judges, and Munsifs shall be appointed by the Local Government.*

* In s. 6, the proviso, repealed by Act XIV. of 1891, s. 11 (2), has been omitted.

Act XIII. of 1879.

Additional Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner, and with the previous sanction of the Governor-General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a Judge under Chapter III. of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.

Temporary charge of office of District Judge.

8. In the event of the death of a District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station at which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the Subordinate Judge holding his Court at the same place, shall, without relinquishing his ordinary duties, assume charge of the Judge's office at such station;

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes, and the like functions;

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

Transfer of proceedings on death, &c., of Subordinate Judge.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him, the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

Principal Civil Court of original jurisdiction.

10. The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends.

Control over Civil Courts.

The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.

Appointment of ministerial officers of Courts.

11. The Judicial Commissioner and the District Judges, Subordinate Judges, and Munsifs, shall appoint the ministerial officers of their respective Courts:

Provided that, in the case of the Subordinate Judges and Munsifs, such appointments shall require the sanction of the District Judge to whose control they are respectively subject.

Transfer of ministerial officers.

12. The Judicial Commissioner or any District Judge may transfer any ministerial officer from any Court under his control to any other Court under his control.

Seals of Courts.

13. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Act XIII. of 1879.

Place of sitting of Courts.

14. The Local Government may fix, and from time to time alter, the place or places at which any Court under this Act is to be held.

Power to confer Munsif's jurisdiction.

15. The Local Government may, from time to time, by notification in the official Gazette, invest such persons as it thinks fit with the powers of a Munsif, subject to such restrictions in respect of the value of the subject-matter of the suit as may be deemed proper, and withdraw such jurisdiction.

All persons so invested shall be called "Honorary Assistant Commissioners."

All Honorary Assistant Commissioners invested with powers under the Oudh Laws Act, 1876, section 43,* and exercising such powers at the time this Act comes into force, shall be deemed to have been invested with the like powers under this section.

CHAPTER III.

GENERAL JURISDICTION.

Power to fix local limits of jurisdiction.

16. The Local Government shall, by notification in the official Gazette, fix, and may, by like notification, from time to time, vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Extent of original jurisdiction of District Judge;

17. Subject to the provisions of the Code of Civil Procedure,† section 15, "and of any other enactment for the time being in force,"‡

(*a*) the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts;

(*b*) the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees; and

of Subordinate Judge;

(*c*) the jurisdiction of a Munsif extends to all suits in which such amount or value does not exceed "one thousand rupees:"§

of Munsif.

"The Local Government may, from time to time, on the recommendation of the Judicial Commissioner, direct, by notification in the official Gazette—

(*a*) with respect to any Munsif named therein, that his jurisdiction shall extend, subject as aforesaid, to all suits of such value, not exceeding two thousand rupees, as may be specified in the notification, or

(*b*) with respect to any Subordinate Judge named therein, that his jurisdiction shall extend, subject as aforesaid, to all original suits cognizable by the Civil Courts,

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* S. 43 of Act XVIII. of 1876 was repealed by s. 2 of this Act.

† This reference to s. 15 of Act X. of 1877 should now be read as applying to s. 15 of Act XIV. of 1882.—See s. 3 of the latter Act.

‡ The words quoted have been inserted by Act XX. of 1890, s. 39.

§ The words quoted have been substituted for the words "five hundred" by Act XX. of 1890, s. 39.

and may, from time to time, by like notification, withdraw any jurisdiction so conferred."* Act XIII. of 1879.

Appeals from decrees and orders of Subordinate Judges and Munsifs.

18.† (*1*) An appeal from a decree or order of a Subordinate Judge in an original suit or proceeding shall, when an appeal is allowed by law, lie—

(*a*) to the District Judge where the value of the suit in which, or in any proceeding arising out of which, the decree or order was made, did not exceed five thousand rupees, and

(*b*) to the Judicial Commissioner in any other case.

(*2*) An appeal from a decree or order of a Munsif shall, when an appeal is allowed by law, lie to the District Judge.

(*3*) The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, direct, by notification in the official Gazette, that appeals from all or any of the decrees or orders of any Munsif shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

Power to refer to Subordinate Judge appeals from Munsifs.

19. Every District Judge may, from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

Appeals from District and Additional Judges.

20. Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.

21. [*When Judicial Commissioner may receive second appeal.*] *Repealed by Act XIV. of 1891, s. 11 (1).*

22. [*Appeals from decrees, &c., passed before Act comes into force.*] *Repealed by Act XIV. of 1891, s. 11 (2).*

Presiding officer of Court not to try suit, &c., in which he is interested.

23. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Mode of disposing of such suit, &c.

When any such suit, appeal, or proceeding, comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The Superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of the Code of Civil Procedure.‡

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* In s. 17, the paragraph quoted has been substituted for the original proviso by Act XX. of 1890, s. 39.

† S. 18 has been substituted for the original by Act XX. of 1890, s. 40.

‡ This reference to s. 25 of Act X. of 1877 should now be read as applying to s. 25 of Act XIV. of 1882.—See s. 3 of the latter Act.

Act XIII. of 1879. In the event of an appeal being preferred from a judgment or order passed by a Judicial Commissioner or an Additional Judicial Commissioner in any other capacity, or in which he has any personal interest, the case shall be heard by the Additional Judicial Commissioner or the Judicial Commissioner, as the case may be.*

CHAPTER IV.

SPECIAL JURISDICTION.

Power to invest with Small Cause Court Jurisdiction.

24. The Local Government may invest, within such local limits as it from time to time fixes, any District Judge, Additional Judge; or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of "one hundred rupees;"† and may, whenever it thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.

25. [*Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.*] *Repealed by Act XIV. of 1891, s. 11 (2).*

26. [*Disposal of proceedings so transferred.*] *Repealed by Act XIV. of 1891, s. 11 (2).*

Jurisdiction under Divorce Act.

27. For the purposes of the Indian Divorce Act, the "District Judge"‡ shall, throughout the said territories to which this Act applies, be deemed to be the Commissioner of the Division.

CHAPTER V.

MISCONDUCT OF OFFICERS.

Suspension and removal of Judicial Commissioner.

28. The Judicial Commissioner may, with the previous sanction of the Governor-General in Council, be suspended or removed by the Local Government.

Suspension or removal of subordinate judicial officers by Local Government.

29. Any District Judge, Additional Judge, Subordinate Judge, or Munsif may be suspended or removed by the Local Government.

Suspension of Subordinate Judge or Munsif by Judicial Commissioner.

30. The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

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* This paragraph has been substituted for the original by Act XIV. of 1891, s. 11 (3).

† The words quoted have been substituted for the words "fifty rupees" by Act XX. of 1890, s. 41.

‡ In s. 27 the words quoted have been substituted for the words "Judicial Commissioner" by Act XX. of 1890, s. 42.

Suspension of Munsif by District Judge.

31. Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control. Act XIII of 1879.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.

Removal, &c., of ministerial officers of Judicial Commissioner's Court.

32. The Judicial Commissioner may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judges' Courts.

33. The Judicial Commissioner, and, subject only to the general control of the Judicial Commissioner, the Judges of the District Courts, may remove or suspend the ministerial officers of such Courts, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Subordinate Judges' and Munsifs' Courts.

34. Any Subordinate Judge or Munsif may, by order, remove, or suspend from office, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Judicial Commissioner, may, on appeal or otherwise, reverse or modify every such order.

The Judicial Commissioner (or the District Judge within whose jurisdiction such Court is situate) may by order suspend or remove any such ministerial officer.

Recovery of fines.

35. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

CHAPTER VI.

MISCELLANEOUS.

Petition-writers.

36. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, make rules—

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Civil Courts of Oudh; and

(*b*) regulating the conduct of persons so practising.

Whoever breaks any rule made under this section shall be punished with fine which may extend to fifty rupees.

Bar of redemption-suits when mortgage executed before 13th February 1844.

37. When a mortgagee shall, under or by virtue of a mortgage executed before the thirteenth of February, 1844, have obtained possession of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding,

Act XIV. of 1879.

Nothing herein contained shall be taken to bar a suit for redemption in any case where, by the instrument of mortgage, a term was fixed within which the property comprised therein might be redeemed, and such term had not expired before the thirteenth day of February, 1856: provided that, if any such term had expired before that day, the suit shall be barred, whatever may have been the date on which the instrument was executed.

Redemption-suits not barred where fixed term for redemption had not expired before 13th February 1856.

38. Subject to such orders as may from time to time be issued by the Governor-General in Council, and to the approval of the Local Government, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in the Court subordinate to him.

Vacations.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

39. *[Pending proceedings.] Repealed by Act XIV. of 1891, s. 11 (2).*

SCHEDULE.

[Acts repealed.]

Repealed by Act XIV. of 1891, s. 11 (2).

ACT XIV. 1879.

THE HACKNEY-CARRIAGE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH SEPTEMBER 1879.

An Act for the Regulation and Control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Hackney-carriage Act, 1879:"

Commencement.

and it shall come into force at once;

but nothing herein contained shall affect any power conferred by any law relating to municipalities,* or any rule, made in exercise of any such power.

Saving.

Interpretation-clause.

2. In this Act—

"Hackney-carriage" means any wheeled vehicle drawn by animals and used for the conveyance of passengers which is kept, or offered, or plies, for hire; and

"Committee" means a Municipal Committee, or a body of Municipal Commissioners, constituted under the provisions of any enactment for the time being in force.

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* For the law relating to municipalities in the N.-W. P. and Oudh, see Acts XV. of 1873 and XV. of 1883.

Act XIV. of 1879.

Application of Act to municipalities.

3. The Lieutenant-Governors of the North-Western Provinces and the Punjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma,* Assam, Ajmere, and Coorg, may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively.

Power of Committees to make rules.

When this Act has been so applied to any municipality, the Committee of such municipality may, from time to time, make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law† for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Confirmation and publication of rules.

Every rule made under this section shall, when confirmed by the Local Government and published for such time and in such manner as the Local Government may, from time to time, prescribe, have the force of law:

Power of Local Government to rescind rules.

Provided that the Local Government may, at any time, rescind any such rule.

Power to make rules for cantonments.

4. The Local Government of any of the said territories may, from time to time, subject to the control of the Governor-General in Council, make rules for the regulation and control of hackney-carriages in any military cantonment situated in the territory administered by it.‡

The Governor-General in Council may, from time to time, make rules for the regulation and control of hackney-carriages in any place in India, but not in British India, in which British troops are cantoned.

All rules made under this section, when published for such time and in such manner as the authority making the same may from time to time prescribe, shall have the force of law.

Power to extend operation of rules beyond limits of municipality or cantonment.

5. The authority making any rules under this Act may extend their operation to any railway-station, or specified part of a road, not more than six miles from the local limits of the municipality or cantonment concerned:

Provided that such extension shall be made, in the case of a municipality with the sanction of the Local Government, and, in the case of a cantonment situate in British India, subject to the control of the Governor-General in Council.

When any rules have been made under this Act for any municipality, the Local Government may, subject to the control of the Governor-General in Council, extend the operation of such rules to any cantonment the boundary of which is not more than six miles distant from the boundary of such municipality.

What rules under sections 3 and 4 may provide for.

6. The rules to be made under section three or section four may, among other matters,—

* This reference to British Burma should now be read as referring to Lower Burma.

† For the laws relating to municipalities in the N.-W. P. and Oudh, see Act XV. of 1873 and Act XV. of 1883. Rules cannot be made under the latter Act in respect of vehicles to which Act XIV. of 1879 applies.—See Act XV. of 1883, s. 55 (4).

‡ Portion repealed by Act XIII. of 1889 is omitted.

Act XIV. of 1879.

(*a*) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf;

(*b*) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(*c*) provide for the issue of the licenses referred to in clauses (*a*) and (*b*), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(*d*) regulate the description of animals, harness, and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness, and other things used therewith, shall be kept, and the lights (if any) to be carried after sunset and before sunrise;

(*e*) provide for the inspection of the premises on which any such carriages, animals, harness, and other things are kept;

(*f*) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(*g*) provide for the numbering of such carriages;

(*h*) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same;

(*i*) appoint places as stands for hackney-carriages, and prohibit such carriages waiting for hire except at such places;

(*j*) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage, and prescribe the minimum speed at which such carriages when hired by time shall be driven;

(*k*) limit the number of persons, and the weight of property, which may be conveyed by any such carriage;

(*l*) require the owner or person in charge of any such carriage to keep a printed list of fares in English and such other language as may be prescribed affixed inside such carriage in such place as may be determined by the rules, and prohibit the destruction or defacement of such list;

(*m*) require drivers to wear a numbered badge or ticket, and to produce their licenses when required by a Magistrate or other person authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges, and

(*n*) provide for the deposit of property found in such carriages, and the payment of a fee by the owner of such property on the delivery thereof to him.

Penalty for breach of rules.

7. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Disposal of fees and payment of expenses.

8. The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall in any municipality be credited and debited respectively to the municipal fund, and in any cantonment where there is a cantonment-fund, to such fund.

Power of Magistrate to decide disputes regarding fares.

9. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen; and such Magistrate or bench may, besides determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or bench thinks fit.

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine.*

The decision of any Magistrate or bench in any case under this section shall be final.

When any such case is heard by a bench, any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

In case of dispute, hirer may require driver to take him to Court.

10. If at the time any dispute mentioned in section 9 arises, any Magistrate or bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules apply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or bench for the purpose of making an application under that section.

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both.

ACT XV. OF 1879.

THE RANGOON PORT COMMISSIONERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH SEPTEMBER 1879.

An Act to appoint Commissioners for the Port of Rangoon.

Preamble.

WHEREAS it it expedient to provide for the management of the affairs of the Port of Rangoon, and for that purpose to appoint Commissioners; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Rangoon Port Commissioners Act, 1879."

* As to recovery of fines, see Act I. of 1868, s. 5.

Act XV. of 1879.

Commencement.

and it shall come into force on such date as the Local Government may notify in the local official Gazette.*

Nothing herein contained shall affect the powers conferred on the "Local Government under the Burma Municipal Act, 1884, section 60, clause (*c*)."†

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—.

"Port" means the Port of Rangoon as defined for the purposes of this Act:.

"river" means any flowing water within a radius of eight statute-miles from Soolay Pagoda wharf navigable by vessels, and includes the bank up to high-water mark:

"high-water mark" means a line drawn through the highest points reached by ordinary spring-tides at any season of the year:

"low-water mark" means the lowest point reached by ordinary ebb spring-tides at any season of the year:

"vessel" includes anything made for the conveyance by water of human beings or of property:

"master," when used in relation to any vessel, means any person (except a pilot or harbour-master) having for the time being the charge or control of such vessel:

"pilot" means a person for the time being authorized by the Local Government to pilot vessels:

"owner" includes also any agent to whom a vessel is consigned:

"land" includes the bed of the river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth; and

"commissioners" means the Commissioners appointed under this Act.

Power to define and alter limits of port.

3. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, define the limits of the port for the purposes of this Act, and may, from time to time, with the like sanction, and by a like notification, alter such limits.‡

Such limits may extend to any part of the navigable approaches to the port, and may include any wharves, quays, stages, jetties, piers, tramways, warehouses, sheds, and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance, and good government of the port or river, whether within or without high-water mark, and (subject to any rights of private property therein) any portion of the shore or bank within fifty yards of high-water mark.

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* Act XV. of 1879 came into force on January 1, 1880.—See *Burma Gazette*, Dec. 20, 1879, Pt. II., p. 283.

† In s. 1, the words quoted have been substituted for the original by Act XI. of 1889, s. 100.

‡ For limits of the port of Rangoon as defined under s. 3, see *Burma Gazette*, Dec. 22, 1888, Pt. I., p. 591.

CHAPTER II.

OF THE APPOINTMENT AND REMOVAL OF THE COMMISSIONERS.

Appointment of Commissioners.

4. The Local Government may, from time to time, appoint persons, either by name or by virtue of their office, to be Commissioners for the Port of Rangoon;

Provided that—

(*a*) the number of such Commissioners holding office at one and the same time shall not be more than twelve or less than nine:

(*b*) the number of such Commissioners who are persons holding salaried offices under Government shall not be—

(i) less than four, or more than six, when the total number of Commissioners is eleven or twelve;

(ii) less than three, or more than five, when the total number of Commissioners is nine or ten.

Tenure of office.

5.*(*1*) If a Commissioner be appointed by virtue of his office, the person for the time being holding the office shall be a Commissioner until the Local Government shall otherwise direct.

(*2*) Commissioners appointed by name shall hold office for two years and may thereafter be re-appointed; but the Local Government may, at any time, accept the resignation of any such Commissioner.

Removal of Commissioners.

6. Notwithstanding anything in sections 4 and 5, the Local Government may,—

(*a*) with the previous sanction of the Governor-General in Council by written order, direct that any Commissioner therein named shall cease from a specified date to be a Commissioner;

(*b*) by written order direct that any Commissioner therein named who without the written consent of the Local Government, absents himself from six consecutive meetings of the Commissioners, shall cease to be a Commissioner:

and the Commissioner so named shall cease to be a Commissioner accordingly.

Chairman and Vice-chairman.

7. The Local Government may, from time to time, appoint one of the Commissioners to be Chairman and another of the Commissioners to be Vice-chairman, and cancel such appointment. Such Chairman and Vice-chairman respectively shall receive such remuneration, if any, as the Local Government may from time to time determine.

Appointments, &c., to be notified.

8. Every appointment and removal from office made and resignation accepted under sections 4, 5, 6, and 7, shall be notified in the local official Gazette.

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* S. 5 has been substituted by Act III. of 1892, s. 1.

Act XV. of 1879.

CHAPTER III.

POWERS AND DUTIES OF COMMISSIONERS.

Administration vests in Commissioners.

9. Subject to the powers conferred on, and reserved to, the Governor-General in Council and the Local Government respectively by this Act or any other enactment for the time being in force, the execution and administration of the powers and trusts created and declared by this Act shall be vested in the Commissioners.

Power to hold property.

10. With the previous sanction of the Local Government, the Commissioners may acquire and hold moveable or immoveable property within or without the limits of the port; and, with the same sanction, may lease, mortgage, sell, or exchange such property.

Transfer of Government property to Commissioners.

11. The property specified in Schedule A hereto annexed shall be vested in the Commissioners:

Provided that—

(*a*) no buildings or other permanent structures shall be erected thereon, except with the sanction of, and in accordance with plans to be previously approved by, the Local Government;

(*b*) any portion of such property required by Government for a public purpose may be resumed by Government without claim to compensation on the part of the Commissioners, except for buildings or other permanent structures erected thereon with the sanction of the Local Government subsequently to the date on which this Act comes into force;

(*c*) if any question arises between the Government and the Commissioners as to the boundaries of any portion of such land, the Local Government may define and demarcate such boundaries, and the decision of the Local Government in respect to such boundaries shall be final.

Compensation to municipality for loss of income.

12. As compensation for loss of income heretofore derived from any source of revenue transferred from the municipality of Rangoon to the Commissioners, the Local Government may assign annually to the said municipality, from the money received by the Commissioners, such sum not exceeding the average of such income during the five years next preceding the date on which this Act comes into force, as the Local Government thinks fit.

Acquisition of land.

13. When any land is required for the purposes of this Act, the Local Government may, on the request of the Commissioners, proceed to acquire it under the provisions of the Land Acquisition Act, 1870; and on payment by the Commissioners of the compensation awarded under that Act, the land shall vest in the Commissioners.

Property to be in trust.

14. All property vested in, or acquired or held by, and all moneys paid, or payable to, the Commissioners, shall be held and applied by them in trust for the purposes of this Act.

Works to be constructed.

15. The works to be constructed and carried out by the Commissioners may include the following:—

(*a*) Wharves, quays, stages, jetties, and piers, with all necessary and convenient drains, arches, landing-places, stairs, fences, and approaches;

(*b*) tramways, warehouses, sheds, engines, and other appliances for conveying, receiving, and storing goods and merchandize landed or to be shipped; Act XV. of 1879.

(*c*) laying down moorings, and the erection of cranes, scales, and all other necessary appliances for loading and unloading vessels;

(*d*) reclaiming, enclosing, and raising any part of the bank or bed of the river within the limits of the port;

(*e*) the construction and application of dredges and other machines for cleaning, deepening, and improving the bed of the river within the limits of the port;

(*f*) procuring and employing steam-vessels for towing vessels into, out of, in, or upon, the river or the port;

(*g*) such works without the limits of the port as shall be necessary for the protection of works executed under this Act;

(*h*) all such other works and appliances as may, in the opinion of the Commissioners, be necessary for carrying out the provisions of this Act.

Power to make port-rules.

16. With the previous sanction of the Local Government, the Commissioners may, from time to time, make rules, consistent with this Act, and with the Indian Ports Act, 1889,* for any of the following purposes (that is to say):—

(*a*) for regulating, declaring, and defining the wharves, quays, stages, jetties, and piers on and from which goods shall be landed from and shipped in vessels within the port;

(*b*) for the safe and convenient use of such wharves, quays, stages, jetties, piers, and of landing-places, tramways, warehouses, sheds, and other works in and adjoining the same;

(*c*) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed in taking charge of goods which may have been damaged before landing, or may be alleged to be so damaged;

(*d*) for the mode of payment of tolls, charges, dues, and rates levied under this Act;

(*e*) for providing water for ships and for licensing and regulating waterboats within the port.

(*f*) for the removal of wrecks from the port or the river, and keeping clean the port, the river, the bank of the river, and the works of the Commissioners, and for preventing filth or rubbish being thrown therein or thereon:

(*g*) for otherwise carrying out the purposes of this Act.

Such rules, when sanctioned by the Local Government, shall be published in the local official Gazette, and shall thereupon have the force of law.

Control of pilots within the Port.

17. Within the limits of the port, pilots in charge of vessels shall obey all lawful orders issued to them by the Commissioners in respect to such vessels.

Free public landing-places.

18. The Commissioners shall make a sufficient number of landing-places within the port, from and upon which the public shall be permitted to embark and land free of charge.

* This Act has been substituted in s. 16 for Act XII. of 1875.—See Act X. of 1889 s. 2 (3).

Act XV. of 1879.

Removal of bathing and landing-places.

19. The Commissioners may occupy or remove or alter any bathing-place or landing-place within the port, and prohibit the public from resorting to or using the same: provided that the Commissioners shall provide for the use of the public such other bathing-places or landing-places (if any) as the Local Government may direct.

Appliances for shipping, &c., for sea-going vessels.

20. For the expeditious and convenient shipment and landing of goods in and from sea-going vessels within the port, and for the storing of such goods, the Commissioners shall provide and maintain sufficient wharves, quays, stages, jetties, piers, warehouses, and sheds, and sufficient servants and appliances, and shall, by their servants, land and ship all goods from and in any such vessel coming to such wharf, quay, stage, jetty, or pier, except where there is a lawful excuse for refusing to land or ship such goods, or such vessel is, under any enactment for the time being in force, not entitled to have her cargo shipped or discharged: provided that—

(*a*) the Commissioners shall not be bound to land, ship, or move any single article or package exceeding ten tons of twenty hundred-weight in weight, except at such special charge as may be agreed on in respect of such article or package;

(*b*) the Commissioners may, by special agreement with the masters of vessels or the owners of goods, permit goods to be landed and shipped by others than the servants of the Commissioners.

Sea-going vessel compelled to use wharves, &c.

21. When any wharf, quay, stage, jetty, or pier has been made and completed, with sufficient warehouses, sheds, and appliances for landing and shipping, or for landing or for shipping, goods from and in sea-going vessels, the Commissioners may, with the previous sanction of the Local Government, by a notification published in three consecutive numbers of the local official Gazette, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing, and shipping, or for landing or for shipping, as the case may be, goods from and in sea-going vessels.

From and after such publication the Commissioners may, from time to time, when there is room at such wharf, quay, stage, jetty, or pier, order to come alongside of such wharf, quay, stage, jetty, or pier, for the purpose of landing and shipping goods, or for landing or for shipping the same, as the case may be, any sea-going vessel within the port which has not commenced to discharge cargo, or which, being about to take in cargo, has not commenced to take in cargo.

If accommodation sufficient, all sea-going vessels compelled to use wharves, &c.

22. When a sufficient number of wharves, quays, stages, jetties, piers, warehouses, sheds, and appliances have been provided as aforesaid, the Commissioners may, with the previous sanction of the Local Government, by an order published in three consecutive numbers of the local official Gazette, direct that no goods shall be landed or shipped from or in any sea-going vessels within the port, save at such wharves, quays, stages, jetties, and piers, and may, in like manner, alter, vary, or revoke any such order.

Inland vessels compelled to use wharves, &c.

23. When any wharf, quay, stage, jetty, or pier for receiving, landing, or shipping goods from or in vessels, not being sea-going vessels, has been made and completed by the Commissioners, with sufficient warehouses, sheds, and appliances in that behalf, the Commissioners may, with the sanction of the Local Government,

by an order published in three consecutive numbers of the local official Gazette, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing, and shipping goods from or in vessels not being sea-going vessels, and that, within certain prescribed limits within the port to be specified in such order, it shall not be lawful to land or ship any goods from or in any vessel, not being a sea-going vessel of any class specified in such order, except at such wharf, quay, stage, jetty, or pier, nor for any such vessel while within such limits, to anchor, fasten, or lay within fifty yards of low-water mark without the consent of the Commissioners.

If, after such publication, any such vessel, while within such limits, so anchors, fastens, or lays, the Commissioners may cause the same to be removed out of the said limits.

The Commissioners may, in like manner, with the like sanction, alter, vary, or revoke any such order.

Power to order removal of vessels from wharves, &c.

24. The Commissioners may, by notice in writing, order the master or owner of any vessel to remove such vessel from any wharf, quay, stage, jetty, or pier, belonging to the Commissioners, and, unless such vessel is removed therefrom within thirty-six hours after service of such notice on the master or owner thereof, the Commissioners may charge in respect of such vessel such sum as they think fit not exceeding one hundred rupees for each day of twenty-four hours or portion of such day after the expiry of such thirty-six hours during which such vessel remains at such wharf, quay, stage, jetty, or pier.

Power to exempt from obligation to use wharves, &c.

25. Notwithstanding anything contained in sections 21, 22, and 23, the Local Government may, by notification in the local official Gazette, from time to time permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified cargo or classes of cargo, at such part of the port, in such manner, during such period, subject to such payments, and on such conditions, as the Local Government may think fit, and otherwise grant exemption from the provisions of such sections.

The Local Government may also, by like notification, cancel or modify any such notification.

Discharge of liability on goods landed.

26. Whenever any goods are landed by the Commissioners from any vessel, the Commissioners shall, if so required, give to the master of such vessel a receipt in the form or to the effect set forth in Schedule B hereto annexed, and may, in any such receipt, include all goods landed from such vessel during one day. No master or owner of a vessel from which the goods in respect of which such receipt is given may have been landed shall be liable for any loss or damage to such goods which may occur after they have been so landed.

Wharves, &c., to be appointed under Customs Act.

27. When the Local Government appoints, under the provisions of any Act for the regulation of duties of customs, any wharf, quay, stage, jetty, pier, warehouse, or shed provided under this Act for the use of sea-going vessels to be a wharf for the landing or shipping, or a warehouse for the storing, of goods within the meaning of such Act, the Commissioners shall set apart, maintain, and secure, on or in such wharf, quay, stage, jetty, pier, warehouse, or shed, such portion thereof, or place therein or adjoining thereto, for the use of the officers of Customs, as the Local Government approves of or appoints in that behalf.

Act XV. of 1879.

Dues at customs-wharves, &c.

28. Notwithstanding that any wharf, quay, stage, jetty, pier, warehouse, or shed, or portion thereof, has, under the provisions of the last section, been set apart for the use of the officers of Customs, all dues, rates, tolls, charges, and rents payable under this Act in respect thereof, or for the use thereof, or for the stowage of goods therein, shall be paid and be payable to the Commissioners or to such persons as they may appoint to receive the same.

Private wharves, &c., prohibited.

29. Save as hereinafter provided, no person except the Commissioners shall, after the date on which this Act comes into force, make, erect, or fix, below high-water mark within the port, any wharf, dock, quay, stage, jetty, pier, erection, or mooring.

Any matter or thing so made, erected, or fixed, may be removed by the Commissioners, and the person who has so made, erected, or fixed any such matter or thing shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day during which such matter or thing has been permitted to remain so made, erected, or fixed after notice to remove the same has been given to him, and shall also be liable to pay all expenses which may have been incurred by the Commissioners in removing such matter or thing.

Power to permit erection of private wharves, &c., within the port subject to conditions.

30. The Local Government may, by an order in writing, and subject to the conditions contained in the same, permit any person to make, erect, or fix, below high-water mark within the port, any wharf, dock, quay, stage, jetty, pier, erection, or mooring.

Wharves, &c., beyond port limits.

31. In case any wharf, dock, quay, jetty, pier, erection, or mooring, is, after the date on which this Act comes into force, without the consent in writing of the Local Government, made, erected, or fixed, below high-water mark, without the limits, for the time being, of the port, and thereafter the limits of the port are extended so as to include the place in which such wharf, dock, quay, stage, jetty, pier, erection, or mooring has been made, erected, or fixed, the Commissioners may remove, fill up, or destroy such wharf, dock, quay, stage, jetty, pier, erection, or mooring without making any compensation therefor.

Scale of tolls and charges to be framed.

32. The Commissioners shall frame—

(*a*) a scale of tolls, dues, rates, and charges for the landing and shipment of goods from and in sea-going vessels and vessels not being sea-going vessels respectively at the wharves, quays, stages, jetties, and piers, and for the use of such wharves, quays, stages, jetties, and piers by such vessels, and for the storing and keeping of any goods stored in any premises belonging to the Commissioners, and for the removal of goods, and for the use of any mooring;

(*b*) a scale of tolls for the use of the said wharves, quays, moorings, stages, jetties, and piers by any such vessels, in case the Commissioners permit the goods to be landed or shipped by others than their own servants; and

(*c*) a scale of charges for any services to be performed by the Commissioners or their servants in respect of any vessels or goods, or for the use of any works or appliances to be provided by the Commissioners.

Such scales shall be submitted to the Local Government, and, after approval or modification by the Local Government, shall be published by the Commissioners in the local official Gazette.

Subject to the like approval or modification and publication, the Commissioners may, from time to time, alter the said scales.

Every such scale shall be printed in the English and Burmese languages and characters, and shall be hung up, and kept hung up, in some conspicuous place at the several wharves, quays, stages, jetties, piers, warehouses, and sheds.

Commissioners' lien for tolls and charges.

33. For the amount of all tolls, dues, rates, and charges levied under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, dues, rates, and charges are fully paid.

Tolls, dues, rates, and charges in respect of goods to be landed shall become payable immediately on the landing of the goods, and, in respect of goods to be removed from the premises of the Commissioners, or to be shipped for export, shall be payable before the goods are removed or shipped.

The lien for such tolls, dues, rates, and charges shall have priority over all other liens and claims, except a lien for freight, primage, and general average where such lien has been preserved in the manner hereinafter provided, and a lien for money payable to Her Majesty or the Secretary of State for India in Council under any law for the time being in force.

Owner's lien for freight.

34. If the master or owner of any vessel, at or before the time of landing from such vessel of any goods at any wharf, quay, stage, jetty, or pier, gives to the Commissioners notice in writing that such goods are to remain subject to a lien for freight, primage, or general average, of an amount to be mentioned in such notice, such goods shall continue liable, after the landing thereof, to such lien.

Such goods shall be retained either in the warehouses and sheds of the Commissioners, or with the consent of the Chief Officer of Customs, in the public warehouses, at the risk and expense of the owners of the said goods until the lien is discharged as hereinafter mentioned.

Discharge of ship-owners' lien for freight.

35. Upon the production to any officer appointed by the Commissioners in that behalf of a document purporting to be a receipt for, or a release from, the amount of such lien, executed by the person by or on whose behalf such notice has been given, the Commissioners may permit such goods to be removed without regard to such lien: provided they shall have used reasonable care in respect to the authenticity of such document.

Goods may be removed to warehouses.

36. Whenever goods have, without any default on the part of the Commissioners, been left for two clear days on or in any wharf or shed belonging to the Commissioners, the Commissioners may cause such goods to be removed either to any warehouse belonging to them, or, with the consent of the Chief Officer of Customs, to the public warehouses; and the removal to, and detention in, any such warehouse shall be at the risk and expense of the owners of the said goods.

Whenever any goods are so removed, the Commissioners shall give notice to the consignee or owner of such goods of such removal, if his address be

Act XV. of 1879.

known, by letter sent by post to such address or left thereat; and shall also publish in the local official Gazette and in two local newspapers notice of such removal, and shall specify therein the numbers, marks, and descriptions of such goods so far as the same appear; and the consignee or owner of such goods, in addition to the expenses of the removal of the same, shall be liable, in case the goods are removed to any warehouse of the Commissioners, to a charge for warehousing for the time during which the goods shall remain in the said warehouse.

If the goods are removed to the public warehouses, the said consignee or owner shall be liable to the charges for warehousing goods in such public warehouses; and the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and shall be subject to the power of sale hereinafter given.

Recovery of tolls and charges by sale of goods.

37. If the tolls, dues, rates, and charges payable to the Commissioners in respect of any goods under this Act, are not paid, or if the lien for freight, primage, or general average, where such notice as aforesaid has been given, is not discharged, the Commissioners may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, primage, or general average, shall, at the expiration of four months from the time when the goods were placed in their custody, sell by public auction the said goods or so much thereof as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the local official Gazette and in two local newspapers.

If the address of the owner of the goods has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post; but the title of a *bonâ-fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to enquire whether such notice has been sent:

Provided that, if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Commissioners in that behalf, to render early or immediate sale necessary or advisable, the Commissioners may, within such period not less than twenty-four hours after the landing of the goods as they think fit, sell by public auction the said goods or such portion of them as aforesaid, in which event such notice, if any, shall be given to the owner of the goods as the urgency of the case admits of.

Application of sale-proceeds.

38. The proceeds of every such sale shall be applied as follows:—

(*a*) in payment of the expenses of the sale;

(*b*) in payment, according to their respective priorities, of the liens and claims excepted in section 33 from the priority of the lien of the Commissioners;

(*c*) in payment of the tolls, dues, rates, and charges of landing, removing, storing, or warehousing the same, and of all other charges due to the Commissioners in respect thereof.

The surplus, if any, shall be paid to the importer, owner, or consignee of the goods, or to his agents, on his applying for the same: provided such

application be made within one year from the sale, or reason be shown to the satisfaction of the Commissioners why such application was not so made; and, in case such application shall not be so made nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act. Act XV. of 1879.

Recovery of tolls and charges by distraint of vessel.

39. If the master of any vessel in respect of which any tolls, dues, rates, charges, or penalties are payable under this Act, or any rules or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Commissioners may apply to the Collector of Customs of the port, and such Collector shall distrain or arrest such vessel, and the tackle, apparel, and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners is paid;

and, in case any part of the said tolls, dues, rates, charges, or penalties, or of the costs of the distress or arrestment, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrestment has been so made, the Collector of Customs may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such tolls, dues, rates, charges, or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

Port-clearance not to be granted till tolls, &c., are paid.

40. If the Commissioners give to the officer of Government whose duty it is to grant the port-clearance of any vessel a notice stating that an amount therein specified is due in respect of tolls, dues, rates, charges, or penalties chargeable under this Act, or any rules or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel, in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port-clearance until the amount so chargeable has been paid.

Compensation for damage to property of Commissioners.

41. In case any damage or mischief is done to any wharves, docks, quays, jetties, stages, piers, or works constructed or acquired by the Commissioners under this Act by any vessel, through the negligence of the master thereof, or of any of the mariners or persons employed therein, any Magistrate of the town of Rangoon may, on the application of the Commissioners, and on declaration by them that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master or owner of such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief.

If, at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees, the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors, or stores of the vessel, may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid, and such amount shall be paid to the Commissioners out of the proceeds of the distress: provided that, if, at the time of the damage or mischief, the vessel was under the orders of a duly-authorized officer belonging to the Pilot Service or the Harbour-Master's or Master-Attendant's

Act XV of 1879. Department, the case shall not be cognizable by the Magistrate under this section.

River Police.

42. The Commissioners shall provide such sums as the Local Government may, from time to time, require for the establishment and maintenance of police, to be called "River Police," for the protection of the port, the approaches to the port, and the river. Such sums shall be a first charge on any property vested in, and on any moneys paid or payable to, the Commissioners under this Act.

The River Police shall be enrolled under Act No. V. of 1861 (*for the Regulation of Police*).

Local Government may delegate powers to survey steamers.

43. The Local Government may, from time to time, delegate to the Commissioners all or any of the powers conferred on the Chief Commissioner of Lower Burma* within the port under the Burmese Steamer Survey Act, 1871,† and may at any time resume the same.

CHAPTER IV.

OF THE GENERAL CONTROL OF GOVERNMENT.

Commissioners' acts subject to approval.

44. All acts and proceedings of the Commissioners shall be subject to the approval of the Local Government; and the Local Government may cancel, suspend, or modify any such acts or proceedings, and may grant exemption from the payment of any tolls, charges, dues, or rates leviable under this Act.

Control over works and expenditure.

45. The Local Government may, from time to time, make rules consistent with this Act as to the cost and class of works which the Commissioners may execute, and the objects to which the receipts of the Commissioners shall be applied.

Local Government may order survey.

46. The Local Government may at any time order a survey and examination of any works of the Commissioners under this Act, or the site thereof; and the cost of such survey or examination shall be borne and paid by the Commissioners.

Local Government may carry out neglected works.

47. If the Commissioners allow any work acquired or constructed by them under this Act to fall into disrepair, or do not complete any work commenced by them or duly estimated for and sanctioned, and do not, after notice given by the Local Government in writing, proceed effectually to repair or complete such work, the Local Government may cause such work to be restored, completed, or constructed, and the cost thereof shall be borne and paid by the Commissioners.

Governor-General in Council may revoke powers of Commissioners.

48. If at any time the Governor-General in Council is satisfied that the purposes intended to be accomplished under this Act have not been, and are not likely to be, properly accomplished by the Commissioners, the Governor-

* Since Upper Burma was placed under the administration of the Chief Commissioner of Lower Burma, this officer is styled Chief Commissioner of Burma.— See Proclamation dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

† This Act has been repealed by Act VI. of 1884, s. 3, but see s. 4, *ibid.*

General in Council may, by notification in the *Gazette of India*, to be re-published in the local official Gazette, give notice that, unless within six months the Commissioners take measures to the satisfaction of the Governor-General in Council for properly accomplishing such purposes, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked. [Act XV. of 1879.

On the expiration of the period aforesaid, the Governor-General in Council may, if no such measures to his satisfaction have been taken by the Commissioners, declare such powers to be withdrawn or revoked, and may direct the Local Government to assume such powers; and thereupon such powers shall be withdrawn and revoked accordingly, and all the powers, rights, and authorities, and all the property vested by this Act in the Commissioners, shall thereupon vest in the Local Government.

CHAPTER V.

OF SUITS BY AND AGAINST THE COMMISSIONERS.

Chairman or Vice-chairman to sue.

49. The Commissioners shall sue and be sued in the name of their Chairman or their Vice-chairman.

Commissioners not personally liable.

50. No Commissioner shall be personally liable for any contract made or expense incurred by or on behalf of the Commissioners; but the funds from time to time in the hands of the Commissioners shall be liable for, and chargeable with, all contracts made in manner hereinafter provided.

Commissioners liable for breach of trust.

51. Every Commissioner shall be liable for any misapplication of money entrusted to the Commissioners to which he has been a party, or which happens through, or is facilitated by, the neglect of his duty.

Limitation of suits.

52. No suit shall be brought against the Commissioners or any of their officers, or any person acting under their direction, for anything purporting to be done under this Act until the expiration of one month next after notice in writing has been delivered or left at the office of the Commissioners, or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff.

Unless such notice be proved, the Court shall dismiss the suit.

Every such suit shall be commenced within six months next after the accrual of the right to sue, and not afterwards.

If any person to whom any such notice of suit is given before suit is brought tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Indemnity to Commissioners for acts of Harbour-Masters, &c.

53. The Commissioners shall not be answerable for any act or default of any Master-Attendant or Harbour-Master, or of any Pilot, or of any deputy or assistant of any of the officers above-mentioned, or of any person acting under the authority or direction of any such officer or assistant, done within the limits of the port; nor for any damage sustained by any vessel in

Act XV. of 1879.

consequence of any defect in any of the moorings, hawsers, or other things within the said limits which may be used by such vessel:

Provided that nothing in this section shall protect the Commissioners from a suit in respect of any act done by or under their express order or sanction.

CHAPTER VI.

OF MEETINGS, ESTABLISHMENT, CONTRACTS, AND THE GENERAL CONDUCT OF BUSINESS.

A Commissioner may be secretary.

54. The Commissioners may, if they think fit, elect one of their number to be secretary to the Commissioners.

Seal and place of business.

55. The Commissioners shall have a common seal inscribed "Port Commissioners, Rangoon," and an office where the Commissioners shall meet for the transaction of business.

Monthly meetings and remuneration for attendance.

56. The Commissioners shall meet for the transaction of business at least once in every month; and for attendance at every such meeting the Commissioners shall, subject to such conditions as the Local Government may, from time to time, prescribe, receive such fees as the Local Government may, from time to time, direct: provided that such fees shall not be given for attendance at such meetings oftener than once a month.

Chairman and Vice-chairman to attend.

57. The Chairman and Vice-chairman shall, unless prevented by sickness or other reasonable cause, attend all meetings of the Commissioners.

Ordinary and special meetings.

58. The Chairman, or, in the event of his illness or absence from Rangoon, the Vice-Chairman, may, whenever he thinks fit, and shall upon a requisition made in writing by not less than three Commissioners, convene a meeting of the Commissioners for the transaction of any special business.

Meetings so convened are special meetings; all other meetings are ordinary meetings.

Notice of meetings.

59. At least three days' notice shall be given of every meeting of the Commissioners, and the notice shall state the nature of the business to be transacted.

Conduct of business at meetings.

60. At all meetings of the Commissioners the business shall be conducted in accordance with the following rules:—

(*a*) the Chairman, or, in his absence, the Vice-Chairman, shall be President; if both be absent, the Commissioners may elect one of their number to be President;

(*b*) the President may, with the consent of the meeting, adjourn the meeting from time to time;

(*c*) at special meetings no business shall be transacted other than the special business for the consideration of which the meeting was specially called;

at ordinary meetings any business may be transacted of which due notice has been given; Act XV of 1879.

(*d*) the quorum necessary for the transaction of business shall be such number, not less than five, as the Commissioners may, from time to time, prescribe, "but no Commissioner who is prohibited, as hereinafter provided, from voting or taking part, in any proceedings shall be counted in the quorum so far as regards such proceedings;"*

(*e*) all questions which may come before the Commissioners at any meeting shall be decided by a majority of votes. Each Commissioner shall have one vote; and, in case of equality of votes, the President shall have a second or casting vote: "provided that no Commissioner shall vote or take part in any proceedings relating to any loan, contract, or work in which he is pecuniarily interested;"†

(*f*) minutes of the proceedings at all meetings of the Commissioners shall be drawn up after each meeting, and shall be signed by the President and at least one other member who was present at such meeting; a copy of all such minutes shall, as soon as conveniently may be, be transmitted to the Secretary to the Local Government;

(*g*)‡ all meetings of the Commissioners shall be open to the public, unless the President shall, in any particular case, otherwise direct.

Mode of giving effect to resolutions.

61. The Commissioners may appoint one or more of their number to carry out their resolutions, and to enforce any of the rules made under the provisions of this Act, or they may appoint a special officer for such purpose.

Proceedings not invalidated by defect of form.

62. No proceedings of the Commissioners at any special or ordinary meeting shall be deemed invalid solely by reason of defect of notice or defect of form.

Schedule of establishment.

63. The Commissioners shall, from time to time, prepare and submit to the Local Government a schedule setting forth the number of officers and servants necessary for carrying out the purposes of this Act, and of the salaries, fees, and allowances which it is proposed to assign to such officers and servants. The Local Government may sanction such schedule, or modify and sanction the same. Every such schedule so sanctioned shall remain in force till some other such schedule has been so prepared and sanctioned.

It shall not be lawful for the Commissioners to employ any officer or servant for any office or employment not sanctioned in such schedule, nor to pay or allow to any officer or servant any salary, allowance, or fee greater than, or beyond, that sanctioned therein.

Nothing in this section applies to artisans, porters, or labourers "or to any officer or servant, the period of whose employment shall not exceed three consecutive months at any one time, and whose salary shall not exceed one hundred rupees a month."§

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* In cl. *d* the words quoted have been added by Act III. of 1892, s. 2 (*1*).
† In cl. *e* the proviso quoted has been added by Act III. of 1892, s. 2 (*2*).
‡ Cl. *g* has been added by Act III. of 1892, s. 2 (*3*).
§ To s. 63 the words quoted have been added by Act III. of 1892, s. 3.

Act XV. of 1879.

Commissioners are public servants.

64. The Commissioners and the servants of the Commissioners, other than artisans, porters, and labourers, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Commissioners may make bye-laws.

65. The Commissioners may, from time to time, make bye-laws consistent with this Act for regulating the time and place of their meetings, the conduct of their business, the division of the duties among themselves, the guidance of persons employed by them, the appointment, payment, leave, suspension, and removal of their officers and servants mentioned in the schedule last aforesaid, and for other similar matters.

The making of contracts.

66. Such one of their number as the Commissioners may, from time to time, with the previous sanction of the Local Government, appoint in this behalf, may, for and on behalf of the Commissioners, enter into any contract whereof the value or amount shall not exceed two hundred rupees, in such manner and form as, according to the law for the time being administered in Rangoon, would bind him if such contract were on his own behalf; but every other contract by or on behalf of the Commissioners shall be in writing, and signed by the Chairman or Vice-Chairman and by two other Commissioners, of whom one shall be an *ex-officio* Commissioner, and shall be sealed with the common seal of the Commissioners: provided that no contract under or by virtue of which a sum greater than ten thousand rupees may in any event be payable by the Commissioners shall be valid without the assent in writing of the Local Government.

No contract, not executed as in this section provided, shall be binding on the Commissioners.

Manner in which work to be sanctioned.

67. No new work, the estimated cost of which exceeds five hundred rupees, shall be commenced by the Commissioners, nor shall any contract be entered into by the Commissioners in respect of any such work, until a plan and estimate thereof has been approved by the Commissioners, at a meeting.

In case the estimated cost of such new work exceeds five thousand rupees, it shall not be commenced, nor shall any contract be entered into in respect of it, until such plan and estimate have been submitted to the Local Government, and sanctioned by it in an order published in the local official Gazette.

And, in case the estimated cost of any such work exceeds fifty thousand rupees, the Local Government shall not sanction the same until such plan and estimate have been submitted to the Governor-General in Council, and approved by him.

Money to be kept in Bank.

68. All moneys raised by and paid to the Commissioners under this Act shall be kept in the Bank of Bengal in Rangoon, and no disbursement of such funds, or any part thereof, shall be made—

(*a*) in excess of such sum as may, in that behalf, be, from month to month, appropriated by the Commissioners at a meeting; or

(*b*) except under the signature of the Chairman or Vice-Chairman.

Submission of reports, accounts, and estimates.

69. The Commissioners shall annually, or oftener if directed by the Local Government so to do, submit, in such form and at such time as the Local Government may, from time to time, direct—

(*a*) statements of their receipts and disbursements under this Act; Act XV. of 1879.

(*b*) reports of all works executed and proceedings taken by them under this Act;

(*c*) an estimate of their probable receipts for the financial year next following, with proposals for the expenditure of the same.

Audit of accounts and sanction and publication of estimates.

70. The accounts of the Commissioners shall be examined and audited in such manner as the Local Government may, from time to time, direct; and, subject to the provisions of this Act, the estimate of probable receipts, and the proposals for expenditure as aforesaid, may, on submission, be sanctioned by the Local Government, or may be modified or altered, and sanctioned.

An abstract of such estimates and proposals shall, when sanctioned, be published in the local official Gazette.

CHAPTER VII.

PENALTIES.

Commissioners, &c., not to be interested in contracts, &c.

71.* (*1*) Any officer or servant of the Commissioners who shall directly or indirectly lend money to the Commissioners, or become pecuniarily interested in any contract made by, or on behalf of, the Commissioners, or participate, or agree to participate, in any profits of any work done by order, or on behalf, of the Commissioners, shall forfeit his office or employment, and shall thenceforward be incapable of holding any office or employment under the Commissioners, and shall further be punishable with fine which may extend to five hundred rupees.

(*2*) Any Commissioner who, without the previous sanction, in writing, of the Local Government, shall, directly or indirectly, lend money to the Commissioners, or become pecuniarily interested in any contract made by, or on behalf of, the Commissioners, or participate, or agree to participate, in any profits of any work done by order, or on behalf, of the Commissioners, and

any Commissioner who shall vote or take part in any proceedings relating to any loan, contract, or work in which he is pecuniarily interested,

shall forfeit his office as Commissioner, and shall be incapable of re-appointment, and shall further be punishable with fine which may extend to five hundred rupees:

Provided that nothing in this section shall apply to any Commissioner, or officer, or servant of the Commissioners by reason only of his—

(*a*) being a shareholder in, or member of, any incorporated or registered company which may lend money to, or make contracts with, or do work for, or on behalf of, the Commissioners; or

(*b*) holding one or more debentures in any loan raised by the Commissioners in open market.

Infringement of section 21, 22, 23, 25 or 30.

72. Whoever infringes any order issued under section 21, 22, or 23, or any condition prescribed under section 25 or 30, shall be punished with fine which may extend to one hundred rupees; and, if the infringement be continuing, with a further fine which may extend to one hundred rupees for every day such order is infringed.

* S. 71 has been substituted by Act III. of 1892, s. 4.

Act XV. of 1879.

Infringement of rules.

73. Whoever infringes any rule framed by the Commissioners under section 16 shall be liable to a fine which may extend to fifty rupees; and, if the infringement be continuing, to a further fine which may extend to ten rupees for every day after notice of such infringement has been given by the Commissioners.

Punishment in default of fine.

74. Whenever any person is sentenced to a fine under this Act, the convicting Court may direct that, in default of payment of the fine, such person shall suffer simple imprisonment for a term which shall not exceed the following scale:—

(*a*) two months in the case of continuing infringement of section 29;

(*b*) one month in the case of continuing infringement of sections 21, 22, 23;

(*c*) fourteen days if the fine does not exceed fifty rupees;

(*d*) one month if the fine does not exceed one hundred rupees;

(*e*) two months if the fine exceeds one hundred rupees.

Prosecutions.

75. Prosecutions under this Act may be instituted by the Commissioners or any persons authorized by them in this behalf, and not otherwise.

CHAPTER VIII.

MISCELLANEOUS.

Saving of previous port-regulations.

76. All acts done and proceedings taken by the Strand Bank Committee before this Act comes into force, and all orders, rules, and regulations relating to the port, and to wharves, quays, stages, jetties, piers, landing-places, tolls, charges, rates, and dues within the port, made and issued before this Act comes into force, shall, whenever such acts, proceedings, orders, rules, or regulations would have been lawful if this Act had been in force, be deemed to have been respectively done, taken, made, and issued under the provisions of this Act.

Receiving of dues as revenue.

77. All fees and sums due on account of property for the time being vested in the Commissioners, and all arrears of tolls, charges, rates, and dues imposed under this Act, may be recovered as if they were arrears of land-revenue, in addition to the other modes hereinbefore provided.

SCHEDULE A.

(*Referred to in section 11.*)

I.—All the land belonging to Government between the river on the south and the Strand Road and the Monkey Point Battery Road on the north, but not including those roads, from Monkey Point on the east to and including the Canal on the west, except—

(*a*) the land occupied by the Municipality of Rangoon;

(*b*) the land occupied by the Military Authorities as an approach to Godwin's wharf, and to an extent of 100 feet on either side thereof; Act XVI. of 1879.

(*c*) the land occupied by the Military Authorities for the defences at Monkey Point;

(*d*) the land assigned for railway-purposes;

(*e*) the land occupied on the east side of East Street by the Department of Public Works;

(*f*) the land occupied by Customs-officers' quarters and by the Master-Attendant's residence, office, and compound.

II.—All other land belonging to Government within the limits of the present Port of Rangoon lying within a line drawn at fifty yards from high-water mark, except—

(*a*) the land occupied by the Rangoon Gaol saw-mill;

(*b*) the land occupied as Government timber-depôts at Ahlone and Monkey Point;

(*c*) The Dalla Dockyard and the land attached thereto.

SCHEDULE B.

(*Referred to in section 26.*)

RECEIPT FOR GOODS.

By the Port Commissioners, Rangoon.

Landed during the day of from the , by the Port Commissioners, Rangoon, the noted in the margin; contents and state of the contents unknown.

NOTE.—*If there be any apparent injury, this is to be stated.*

For the Port Commissioners, Rangoon.

RANGOON: } A. B.
The day of }

ACT XVI. OF 1879.

THE TRANSPORT OF SALT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH SEPTEMBER 1879.

An Act to restrict the Transport of Salt by Sea.

Preamble. WHEREAS it is expedient to restrict the transport of Salt by Sea in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Transport of Salt Act, 1879:"

Local extent. It extends to the western coast of British India north of Cochin, and to the sea within a distance of a marine league from such coast;

Commencement. and it shall come into force at once.

Penalties for carrying salt in certain vessels. **2.** When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upward, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

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Exceptions.

3. Nothing in section 2 applies to :

(*a*) salt covered by a permit granted under "Chapter V. of the Madras Salt Act, 1889, or Chapter V. of the Bombay Salt Act, 1890, or the corresponding law for the time being in force in the territories administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council, as the case may be;"*

(*b*) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf ;

(*c*) such amount of salt carried on board any vessel for consumption by her crew, or by the passengers or animals (if any) on board, as the Governor of Bombay in Council may, from time to time, exempt from the operation of section 2.

Power of stoppage, search, and arrest.

4. When any officer empowered by the Governor of Bombay in Council, whether by name or office, to act under this section, has reason to believe, from personal knowledge, or from information taken down in writing, that any salt is being carried, or has, within the twenty-four hours next before the requirement first hereinafter mentioned, been carried, in any vessel, so as to render the owner or master of such vessel liable to the penalties prescribed by section 2, he may require such vessel to be brought to, and thereupon may,

(*a*) enter and search the same ;

(*b*) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof ;

(*c*) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India ; and

(*d*) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who, such officer has reason to believe, is punishable under section 2.

Penalties for resisting officer.

5. Any master of a vessel refusing or neglecting to bring to or to produce his papers when required to do so by an officer acting under section 4,

and any person obstructing any such officer in the performance of his duty,

may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Confiscation of vessel and cargo.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section 2, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation.

The confiscation of any vessel under this section shall include her tackle, apparel, and furniture.

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* In s. 3, cl. *a*, the words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

Confiscations under this section may be adjudged by the Chief Customs Authority, or by such other officer as the Local Government may, from time to time, appoint in this behalf. Act XVII. of 1879.

Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs Authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such enquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

Jurisdiction.

7. For the purpose of the adjudication of penalties under section 2 or section 5, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 4 or section 5, he may be brought.

Power to exempt from operation of Act.

8. The Governor-General in Council may from time to time by notification in the *Gazette of India*, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and, by like notification, again subject such carriage to the operation of this Act.

ACT XVII. OF 1879.

THE DEKKHAN AGRICULTURISTS' RELIEF ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH OCTOBER 1879.

An Act for the Relief of Indebted Agriculturists in certain parts of the Dekkhan.

Preamble.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Dekkhan Agriculturists' Relief Act, 1879 :"

Commencement.

and it shall come into force on the first day of November, 1879.

Local extent.

"This section and"* sections 11, 56, 60, and 62 extend to the whole of British India. The rest of this Act extends only to the districts of Puna, Satára, Sholapur, and Ahmadnagar.

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* The words quoted have been added by Act XXIII. of 1881, s. 3.

Construction.

2.* In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely:—

1st.—"Agriculturist" shall be taken to mean a person who, by himself, his servants, or tenants, earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits.

Explanations.—(*a*) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood or to engage personally in agricultural labour as aforesaid, does not thereby cease to be an agriculturist within this definition.

(*b*) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

2nd.—In Chapters II., III., IV., and VI., and in section 96, the term "agriculturist," when used with reference to any suit or proceeding, shall be deemed to include also a person who, when any liability incurred by him and forming the subject or part of the subject of that suit or proceeding was so incurred, was an agriculturist as defined in the first rule.

3rd.—An agriculturist shall be deemed to reside where he earns his livelihood or personally engages in agricultural labour as aforesaid.

4th.—"Money" shall be deemed to include agricultural produce, implements, and stock.

Jágirdárs, &c., to be deemed Subordinate Judges.

2A.† Every jágirdár and other authority invested with powers under Bombay Regulation XIII. of 1830 and Act XV. of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

Application of this chapter.

3. The provisions of this chapter shall apply to—

(*a*) suits for an account, "whatever be the amount or value of the subject-matter thereof,"‡ instituted on or after the first day of November, 1879, by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(*b*) suits of the descriptions next hereinafter mentioned, and instituted on or after the same date—

(1) when such suits are heard by Subordinate Judges of the first class, and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

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* S. 2 has been substituted by s. 3 of Act XXII. of 1882 for the original section as amended by s. 4 of Act XXIII. of 1881.

† S. 2A has been added by Act XXII. of 1882, s. 4.

‡ The words quoted have been inserted by Act XXII. of 1882, s. 5.

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class, and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

The descriptions of suits referred to in clause (*b*) are the following (namely) :—

(*w*) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or

as the price of goods sold, or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for;

(*x*) suits for the recovery of money due on contracts other than the above, and suits for rent or for moveable property, or for the value of such property, or for damages; and

(*y*) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure or sale, when the defendant, or any one of the defendants,* is an agriculturist; and

(*z*) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

Certain suits to be instituted in Courts of first-class Subordinate Judges.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section 3, clause (*b*), and instituted in such local area, shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees, and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

Subordinate Judges not to act as Judges of Small Cause Courts.

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes; and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn.

Jurisdiction of Subordinate Judge and Small Cause Court.

6. The Local Government may, from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of Act XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), shall be heard and determined by him, and not otherwise, and may, by a like notification, cancel any such direction.

* In s. 3, cl. *y*, the words, "not being merely a surety for the principal debtor," repealed by Act XXIII. of 1881, s. 5, have here been omitted.

Act XVII. of 1879.

Summons to be for final disposal of suit.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Court to examine defendant as witness.

In every suit the Court shall examine the defendant as a witness, unless for reasons to be recorded by it in writing, it deems it unnecessary so to do.

Written statements.

8. In suits of the descriptions mentioned in section three, clauses (*w*) and (*x*), no party shall be entitled, without the permission of the Court, to file a written statement.

Record of evidence.

9. When the subject-matter of any suit does not exceed ten rupees in amount or value, it shall not be necessary to take down the evidence, or make a memorandum thereof in manner provided by the Code of Civil Procedure; but in cases where the evidence is not so taken down, and no memorandum is so made, the substance of the evidence shall be stated in the judgment.

No appeal to lie.

10. No appeal shall lie from any decree or order passed in any suit to which this chapter applies.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

Agriculturists to be sued where they reside.

11. Every suit of the description mentioned in section 3, clause (*w*), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides and not elsewhere.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of Civil Procedure.

History of transactions with agriculturist-debtors to be investigated.

12. In any suit of the description mentioned in section 3, clause (*w*), in which the defendant or any one of the defendants,* is an agriculturist,

and in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*),

the Court shall, if the amount of the creditor's claim is disputed, enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence, or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

* In s. 12 the words, "not being merely a surety of the principal debtor," repealed by Act XXIII. of 1881, s. 5, have here been omitted.

When the amount of the claim is admitted, and the Court, for reasons to be recorded by it in writing, believes that such admission is true, and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases, in which the amount of the claim is admitted, the Court shall be bound to enquire as aforesaid.

Section 9, clause first, of Bombay Regulation V. of 1827, is repealed, so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

Mode of taking account.

13. When the Court enquires into the history and merits of a case under section 12, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting-off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings, and create a new obligation,

open the account between the parties from the commencement of the transactions, and take that account according to the following rules (that is to say):—

(*a*) separate accounts of principal and interest shall be taken:

(*b*) in the account of principal, there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor; and the price of goods, if any, sold to him by the creditor as part of the transactions:

(*c*) in the account of principal, there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure:

(*d*) in the account of principal, there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account, or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable:

(*e*) in the account of interest, there shall be debited to the debtor, monthly, simple interest on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided:

(*f*) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service, or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion, or with aid of arbitrators appointed by it, may determine), shall be credited first in the account of interest; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal:

(*g*) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing

Act XVII. of 1879.

due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case double the latter balance shall be deemed to be the amount then due.

Interest to be allowed.

14. The interest to be awai account according to the rules set 13 shall be—

(*a*) the rate, if any, agreed upon between the parties, (if any) through whom they claim, unless such rate is deem to be unreasonable; or

(*b*) if such rate is deemed by the Court unreasonable, agreed upon, or, when any agreement between the partie (if any) through whom they claim, to set off profits withc lieu of interest has been set aside by the Court, such rate as reasonable.

Reference to arbitration in certain cases.

15. Instead of enquiring into the history and merits section 12, or if, upon so enqui unable to satisfy itself as to the amo be allowed on account of principal or interest, or both, the own motion, direct that such amount be ascertained by arbi

If the parties are willing to nominate arbitrators, th be nominated by them in such manner as may be agreed up if the parties are unwilling to nominate arbitrators, or cann of such nomination, the Court shall appoint any three perso

Provided that, if all the parties reside in the same villa and, in the opinion of the Court, three fit persons can be residents of such village, town, or city, it shall appoint village, town, or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

Mortgagor entitled to decree for redemption, though time fixed by mortgage has not arrived, or debt has not been paid.

15A.* In a suit of the description mentioned in section 3, clause (*z*), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage-money has not arrived, or on the ground that the mortgage-debt has not been completely discharged, or on both.

Power to order payment by instalments in case of decree for redemption, foreclosure, or sale.

15B.* (*1*) The Court may, in its discretion, in passing a decree for redemption, foreclosure, or sale in any suit of the descriptions mentioned in section 3, clause (*v*) or clause (*z*), or in the course of any proceedings under a decree for redemption, foreclosure, or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates, and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

* Ss. 15A and 15B have been inserted by Act XXII. of 1882, s. 6.

13A. Where the mortgaged property is in the possession of the mortgagor or his tenants other than the mortgagee, & the Court is unable to determine what profits have been actually received it may fix a fair rent for such property & charge the mortgagee subsequent as profits for the purposes of s. 13:

Provided that, if it be proved that in any year there was an entire or serious failure of the crops an abatement of the whole or part of such rent may be allowed for the year.

Act II of 1895 s. 7.

15AA. So far as it may be consistent with the provisions of this act, every decree for redemption or foreclosure of any mortgage & every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the monies payable under the decree & no such foreclosure shall be made absolute nor shall any such sale take place before the day so named.

Act II of 1895 s. 8

15 b (3) In passing a decree for redemption or foreclosure in any such suit as aforesaid the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further period as will enable him to recover his principal with reasonable interest, & that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

(4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid the Court may in its discretion instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will in the opinion of the Court be sufficient to enable him to recover from the property the amount payable by the mortgagor together with reasonable interest & that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

Act VI of 1895 s. 9.

(2) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realization of that sum.

Power to order payment by instalments in suits for possession of mortgaged property.

15C.* (1) The Court may, if it thinks fit, in any suit for the possession of mortgaged property under section 3, clause (*y*), instead of passing a decree for possession of that property, pass a decree directing that the amount payable by the mortgagor shall be payable in such instalments, on such dates, and on such terms as to the payment of interest, and as to the appropriation of the profits and accounting therefor as it thinks fit.

(2) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit, instead of making any other order which it is empowered to make for the realization of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged.

Mortgagor may sue for account.

15D.* (1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage, and for a decree declaring that amount.

(2) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(3) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid; and the Court may, if it thinks fit, grant the application.

(4) The provisions of section 15B shall apply to any decree passed under sub-section (3).

Agriculturist-debtors may sue for accounts.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price of goods sold, or on a written or unwritten engagement for the payment of money, and of money paid by him to the creditor, and for a decree declaring the amount (if any) still payable by him to the creditor.

Amount of debts in such cases to be determined according to foregoing provisions.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt.

Decree under section 16 may provide for payment by instalments.

17. A decree passed under section 16 may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into Court, in default whereof execution of the decree may be enforced by the

Execution of decrees under this section.

* Ss. 15C and 15D have been inserted by Act XXII. of 1882, s. 6.

defendant in the same manner as if he had obtained a decree in a suit to recover the debt.

Payment into Court in cases under section 16.

18. The plaintiff in any suit instituted under section 16 may, at any stage of such suit, deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Power to discharge judgment-debtor.

19. When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court, "on application or of its own motion,"* may, either in the course of execution of such decree or otherwise, if it is satisfied that "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees,"† and that he is unable to pay the whole of such sum, direct the payment of such portion of the same as it considers him able to pay, and grant him a discharge from the balance "of such sum."‡

Power to direct institution of insolvency-proceedings.

When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other debts due by the debtor which, together with such sum, amount to fifty rupees or upwards, the Court, "on application or of its own motion,"* may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

Power to fix instalments in execution.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

Arrest and imprisonment in execution of decree for money abolished.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money "passed whether before or after this Act comes into force."§

Immoveable property exempted from attachment and sale unless specifically pledged.

22. No agriculturist's immoveable property shall be attached or sold in execution of any decree or order "passed whether before or after this Act comes into force,"‖ unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

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* In s. 19 the words quoted have been inserted by Act XXII. of 1882, s. 7.

† In s. 19 the words quoted have been substituted for the words, "there is no other claim against him," by Act XXIII. of 1881, s. 6.

‡ In s. 19 the words quoted have been added by Act XXIII. of 1881, s. 6.

§ In s. 21 the words quoted have been added by Act XXII. of 1882, s. 8.

‖ In s. 22 the words quoted have been inserted by Act XXII. of 1882, s. 9.

But the Court, "on application or of its own motion"* may, when passing a decree against an agriculturist, or "in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force,"† direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 29. Act XVII. of 1879.

The provisions of section 31 shall, *mutatis mutandis*, apply to any property so dealt with.

Chapter not to apply to Village-Munsifs' Courts.

23. No provision of this chapter shall apply to the proceedings in the Courts of Village-Munsifs unless such provision has been specially extended thereto under the power hereinafter conferred.

CHAPTER IV.

OF INSOLVENCY.

Subordinate Judges to have jurisdiction in agriculturists' cases.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent, and proceedings taken under orders passed under the second clause of section 19; and, except as provided in Chapter VII. of this Act, no such application or proceeding shall be dealt with by any other Court.

Agriculturists may apply for adjudication in cases not provided for by Code.

25. Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

Modification of section 351 of the Code.

26. Notwithstanding anything contained in section 351 of the Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said Code or section 25 of this Act.

Receiver.

27. No person other than the Nazir of the Court shall be appointed as Receiver, and no Receiver shall be entitled to commission.

Proof of debts.

28. In determining under section 352 of the said Code the amount of any claim of the nature referred to in section 12 of this Act due by an insolvent agriculturist, the

* In s. 22 the words quoted have been inserted by Act XXII. of 1882, s. 9.

† In s. 22 the words quoted have been substituted for the words "at any subsequent time," by Act XXII. of 1882, s. 9.

Act XVII. of 1879.

Court shall proceed in the manner prescribed by sections 12 to 15 of this Act, both inclusive.

Immoveable property not to vest in Receiver, but may be managed for benefit of creditors.

29. No immoveable property of the insolvent shall vest in the Receiver; but the Court, "on application or of its own motion,"* may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the Receiver has been appointed, any immoveable property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise:

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall, during the management, have all the powers which the owner might, as such, have legally exercised, and shall receive and recover all rents and profits of such property. and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land-revenue due to Government, except the powers mentioned in the Bombay Land-Revenue Code, 1879, section 150, clauses (*b*), (*d*), and (*e*).

Nothing in this section shall authorize the Court to direct the Collector to take into his possession any houses or other buildings belonging to, and occupied by, an agriculturist.

Secured debts.

30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court, "on application or of its own motion,"† may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the Code of Civil Procedure.

Where property is let under this section, the premium shall be applied to the payment of the debt, and the rent, (if any) shall, for a period of seven years from the date of such letting, be paid to the Receiver, and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale-proceeds shall be applied, first, to the payment of the debt, and the balance (if any) shall be paid to the Receiver.

Insolvent incompetent to sell, &c., property dealt with under sections 29 and 30.

31. So long as any management under section 29 or letting under section 30 continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease, or alienate the property managed or let, or any part thereof.

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* In s. 29 the words quoted have been inserted by Act XXII. of 1882, s. 10.

† In s. 30 the words quoted have been inserted by Act XXII. of 1882, s. 10.

Act XVII. of 1879.

32. When the balance available for distribution among the scheduled creditors under section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section 29, or let by him under section 30.

Scheduled debts discharged.

33. No appeal shall lie from any order passed under this chapter except orders passed in exercise of the power conferred by section 359 of the Code of Civil Procedure.

Appeals barred.

CHAPTER V.

OF VILLAGE-MUNSIFS.

34. The Local Government may, from time to time, appoint any pátel of a village or any other person possessing local influence in a village to be a Village-Munsif for such village, or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

Appointment of Village-Munsifs.

35. Every Village-Munsif so appointed shall take cognizance of suits of the description mentioned in section 3, clause (*w*), when the subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village-Munsif is appointed.

Suits triable by them.

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-Munsif shall not be heard by any other Court:

Jurisdiction of other Courts excluded.

Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-Munsif to his own Court or any other Civil Court in the district for trial:

Proviso.

Provided also that no Village-Munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

36. The District Judge may, on a petition being presented within thirty days from the date of any decree or order of a Village-Munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality, or misconduct of the Village-Munsif, and pass such other decree or order as he thinks fit.

District Judge's power of revision.

Except as provided in this Act and in section 622 of the Code of Civil Procedure, every decree and order of a Village-Munsif shall be final.

37. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for regulating the procedure of Village Munsifs and for conferring on them or any of them all or any of the powers for the

Power of Local Government to make rules.

Act XVII. of 1879.

trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force.

CHAPTER VI.

OF CONCILIATION.

Appointment of Conciliators.

38. The Local Government may, from time to time, appoint any person other than an officer of police to be a Conciliator, and may cancel any such appointment.

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

The expression "officer of police" in this section shall not be deemed to include a police pátel appointed under Bombay Act No. VIII. of 1867 (*for the Regulation of the Village Police in the Presidency of Bombay*).*

Matters which may be brought before Conciliator.

39. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

Procedure thereupon.

40. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing, a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

Day for attendance may, from time to time, be postponed.

If such person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

When all parties appear, Conciliator to endeavour to reconcile them.

41. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement, or to submit such matter to arbitration

Conciliator to hear statements of witnesses, &c.

42. The Conciliator shall hear, but shall not record, the statement of any witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and, if any party or witness consents in

*In s. 38 the last paragraph has been added by Act XXIII. of 1881, s. 7.

If the said Court thinks that the agreement is not a
or equitable one or that it does not finally dispose of the matter or that it
been made in fraud of the stamp or registration laws, it shall of its
ction issue process for the attendance of the parties & if after such
iry as may be deemed necessary the Court finds that such agreement
legal & equitable one finally disposing of the matter, & that it has
been made in fraud of the stamps or registration laws, it shall order
h agreement to be filed; & it shall then take effect as if it were a decree
the said Court passed on the day on which it is ordered to be filed, & from
h no appeal lies.

on the other hand, the said Court finds that the agreement does not
titute a legal or equitable agreement, or that it does not finally dispose
matter, or that it has been made in fraud of the stamps or
tration laws, it shall return the said agreement to the Conciliator
h conciliator shall thereupon be bound to furnish on demand to the
es or any one of them a certificate under s. 40.

Added by Act VI of 1895 s. 12.

writing to affirm any statement upon oath in any form not repugnant to justice or decency, and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

Any agreement arrived at to be reduced to writing.

43. If, on the day on which the case is first heard by the Conciliator, or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter, or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

Explanation.—A Conciliator may be appointed arbitrator under this section.

Procedure when agreement finally disposes of case.

44. When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the "place"* where the agriculturist who is a party thereto resides;

and shall, at the same time, deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.†

Procedure where agreement is for reference to arbitration.

45. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed, and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure.

Certificate to be given to applicant if conciliation fails.

46. If the person against whom any application is made before a Conciliator cannot, after reasonable search, be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears, but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

Suit, or application for execution, not to be entertained by Civil Court unless such certificate is produced.

47. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court

* In s. 44 the word "taluqa" had been substituted for the word "place" by Act XXIII. of 1881, s. 8; but by Act XXII. of 1882, s. 11, the word "place" has been substituted for the word "taluqa."

† In s. 44 the last clause has been added by Act XXII. of 1882, s. 12.

Act XVII. of 1879.

unless the plaintiff produces "a certificate in reference thereto obtained by him under section 46 within the year immediately preceding."*

Explanation.—The expression "Civil Court" in this section does not include a Mámlatdár's Court under Bombay Act No. III. of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*).†

Allowance to be made in period of limitation.

48.‡ In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.

Local Government to make rules.

49. The Local Government may, from time to time, make rules—

(*a*) regulating the procedure before Conciliators in matters not provided for by this Act;

(*b*) fixing the charges to be made by Conciliators for anything done by them under this chapter; and

(*c*) determining what record and accounts shall be kept by Conciliators, and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

District Judge to inspect, &c.

50. The District Judge shall inspect, supervise, and control the proceedings, under "Chapter II., Chapter IV., and Chapter VI.",§ of this Act, of all Subordinate Judges and the proceedings of all Village-Munsifs and Conciliators.

District Judge may withdraw case from Conciliator or Subordinate Judge.

51.¶ The District Judge may—

(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator;

(*b*) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under "Chapter II., Chapter IV., or Chapter VI."‖ of this Act, and may dispose of the same as if he were a Subordinate Judge; or

(*c*) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

or sit with Subordinate Judge as a Bench for trial of any case.

If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

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* In s. 47 the words quoted have been substituted for the words, "such certificate as aforesaid in reference thereto," by Act XXII. of 1882, s. 13.

† In s. 47 the last paragraph has been added by Act XXIII. of 1881, s. 9.

‡ S. 48 has been substituted for the original by Act XXIII. of 1881, s. 10. But the second paragraph (inserted by Act XXIII. of 1881, s. 10) has been omitted, having been repealed by Act XII. of 1891, Sch. I.

§ In s. 50 the words and figures quoted have been substituted for the words and figures, "Chapter II. and Chapter IV.," by Act XXII. of 1882, s. 14.

¶ S. 51 has been substituted for the original by Act XXIII. of 1881, s. 11.

‖ In s. 51 the words and figures quoted have been substituted for the words and figures, "Chapter II. or Chapter IV.," by Act XXII. of 1882, s. 14.

Appointment of Assistant or Subordinate Judge to aid District Judge.

52. The Local Government shall appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges, under "Chapter II., Chapter IV., and Chapter VI."* of this Act, and all Village-Munsifs and Conciliators in each of the said districts of Puna, Satara, Sholapur, and Ahmadnagar: Act XVII. of 1879.

Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts.

Of revision.

...pose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under "Chapter II., Chapter IV., or Chapter VI."† of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit:

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section 55 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.

Special Judge.

54. The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-Munsifs, and Conciliators, and may cancel any such appointment.

Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

But the District Judge or Special Judge, or an Assistant or Subordinate Judge or Bench, may refer to the High Court, under section 617 of the Code of Civil Procedure, any question of law, or usage having the force of law, or the construction of a document, arising in any case pending before him or it under this chapter as if that case were a suit or an appeal pending before

* In s. 52 the words and figures quoted have been substituted for the words and figures "Chapter II. and Chapter IV.," by Act XXII. of 1882, s. 14.

† In s. 53 the words and figures quoted have been substituted for the words and figures, "Chapter II. or Chapter IV.," by Act XXII. of 1882, s. 14.

Act XVII. of 1879.

him or it; and in respect of every reference so made, sections 618 to 621 of the said Code, both inclusive, shall apply:

Provided that no reference shall be made under this section by any Assistant or Subordinate Judge, or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge, or Special Judge, as the case may be.*

No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section 52, or by a Bench, in any suit or proceeding under this Act.

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

Appointment of Village-Registrars.

55. The Local Government may, from time to time,—

(*a*) appoint such persons as it thinks fit, whether public officers or not, to be Village-Registrars for such local areas as it may, from time to time, prescribe;

(*b*) direct the Village-Registrar for any local area to discharge the functions of a Village-Registrar for any other local areas concurrently with the Village-Registrars of such other local areas; and

(*c*) delegate to any person, by name or in virtue of his office, the powers conferred on it by this section;

and may cancel any such appointment, direction, or delegation.

Instruments executed by agriculturist not to be deemed valid unless executed before a Village-Registrar.

56. No instrument which purports to create, modify, transfer, evidence, or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar:

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding, "or apply to any instrument which is executed by an agriculturist merely as a surety."†

Such instruments to be written by, or under the superintendence of, a Village-Registrar, and executed in his presence.

57.‡ When any persons intend to execute any instrument to which section 56 applies, all such persons shall appear before the Village-Registrar appointed for the area in which the agriculturist, or when there are several agriculturists, intending to execute the instrument, any one of such agriculturists, resides, any such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending

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* In s. 54 the last two clauses have been added by Act XXII. of 1882, s. 15.

† In s. 56 the words quoted have been added by Act XXIII. of 1881, s. 12.

‡ S. 57 has been substituted for the original by Act XXIII. of 1881, s. 13.

executants and receiving the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Attestation of such instruments.

Every instrument so written and executed shall at the time of execution be attested by the Village-Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

For the purposes of this section every executant of any such instrument shall appear in person before the Village-Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant, or dependant, whom he has duly furnished with a power-of-attorney, "executed and authenticated in such manner as the Local Government may from time to time by rule prescribe,"* authorizing him to appear and act on his behalf.

Registration of instruments by Village-Registrars.

58. Every Village-Registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration.

As soon as all the "intending executants have executed any instrument"† before a Village-Registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties if there be more than one.

Previous to delivery, the original instrument and each such copy shall be endorsed under the Village-Registrar's signature with the date of registration, the name and residence of the Village-Registrar, and the volume and page of the register in which the instrument has been registered.

Consideration to be fully stated in every instrument executed before a Village-Registrar.

59. In every instrument written by, or under the superintendence of, the Village-Registrar, the amount and nature of the consideration, if any, shall be fully stated.

The Village-Registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

Previous instruments to be produced.

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-Registrar, and shall be fully described in the instrument to be executed, and shall be marked by the Village-Registrar under his hand for identification.

Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village-Regis-

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* In s. 57 the words quoted have been inserted by Act XXII. of 1882, s. 16.

† In s. 58 the words quoted have been substituted for the words, "parties to any instrument have executed it," by Act XXIII. of 1881, s. 14.

Act XVII. of 1879.

trar, but has been otherwise executed, shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

Village-Registrars to be subordinate to the Inspector-General of Registration.

61. The Inspector-General of Registration shall exercise, by himself and his subordinates, a general superintendence over all Village-Registrars, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act for regulating their proceedings, and for providing for the custody of their records.

Exemption of instruments to which Government or any officer of Government is a party.

62. Nothing in this Act shall be deemed to require any instrument to which the Government, or any officer of Government in his official capacity, is a party, to be executed before a Village-Registrar.

Power of Local Government to make rules.

63. The Local Government may, from time to time, make rules regulating the appointment, suspension, dismissal, and remuneration of Village-Registrars, and prescribing the fees to be levied by them.

CHAPTER IX.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

Agriculturists entitled to written receipts:

64. The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, a written receipt for the amount of such payment.

If such payment is made under any instrument executed before a Village-Registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section 58.

To annual statements of account:

65. Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom, may from time to time, by notification in the official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

To have account made up from time to time in a pass-book.

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require, from time to time, that his account up to date be written therein, and authenticated by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section 64, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section 65.

Penalty for contravention of sections 64 to 66.

67. Any person who, in contravention of section 64, 65, or 66, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest

Village Registrars, & may either make rules, or empower such officers to make rules, from time to time consistent with this Act regulating the proceedings of the village registrars, & providing for the custody of their records.

(2) The Local Govt. may, by order to be published in the Govt. Gazette, declare that any documents other than wills remaining unclaimed in a registration office in any district or part of a district to which this Act applies, for a period of not less than two years, may be destroyed.

Act VI of 1895 s. 15

f apply to payments out of Court made in any proceeding
Act, in any case where an acknowledgement by the judgment
editor for the same is produced, or when the payment is either
mitted by him or proved.

Act II of 1895 s. 16.

91A. In taking an account under s. 13 or in any suit under
is Act where interest is chargable such interest shall be
warded at the following rates:—
(a) the rate, if any, agreed upon between the parties or the
ersons (if any) through whom they claim, unless such rate
deemed by the Court to be unreasonable; or,
(b) if such rate is deemed by the Court unreasonable, or if no
a te was agreed upon, then any agreement between the parties
r the persons (if any) through whom they claim, to set off
rofits against interest or assessment similar charges without
ss account has been set aside by the Court, such rate as the Court

the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees. Act XVII. of 1879.

CHAPTER X.

LEGAL PRACTITIONERS.

Pleaders, &c., excluded in certain cases.

68.* No pleader, vakíl, or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village Munsif :†

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant, or dependant who is not, and has not previously been, a pleader, vakíl, or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

When a relative, servant, or dependant appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.

Power of Court to appoint pleader for agriculturist.

69. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakíl, or mukhtár, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf.

CHAPTER XI.

MISCELLANEOUS.

Mortgages, &c., to be valid only when written.

70. No mortgage, lien, or charge of or upon any immoveable property belonging to an agriculturist, shall be valid, unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien, or charge.

Nothing in this section shall apply to any mortgage, lien, or charge created by mere operation of law, or in favour of the Government, or of any officer of the Government in his official capacity.

71. [*Repealed by Act XXIII. of 1881.*]

Limitation.

72.‡ In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who, at the time when the cause of action arose, was an agriculturist, the following periods of limitation shall be deemed to be

* S. 68 has been substituted for the original by Act XXIII. of 1881, s. 15.

† In s. 68, the words, "the subject-matter whereof does not exceed in amount or value one hundred rupees," repealed by Act XXII. of 1882, s. 17, have here been omitted.

‡ S. 72 has been substituted for the original by Act XXIII. of 1881, s. 17.

Act XVIII. of 1879.

substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

(*a*) when such suit is founded on a written instrument registered under this Act or any law in force at the date of execution of such instrument,—twelve years ;

(*b*) in any other case,—six years :

Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.

Decision as to whether person is an agriculturist final.

73. The decision of any Court of first instance that any person is or is not an agriculturist shall, for the purposes of this Act, be final.

Certain agricultural produce exempted from attachment, &c.

73A.* When the Collector has taken any immoveable property of a judgment-debtor or insolvent into his possession under section 22 or section 29, he may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him, and may rescind that order.

While any such order continues in force in respect of any immoveable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed, whether before or after this Act comes into force, and shall not vest in the receiver appointed in any insolvency proceedings.

Civil Procedure Code to apply in Subordinate Judges' Courts.

74. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

Additional power to make rules.

75. The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained.

Rules to be published.

76. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

ACT XVIII. OF 1879.

LEGAL PRACTITIONERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH OCTOBER 1879.

An Act to consolidate and amend the Law relating to Legal Practitioners:

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, and Assam; and to empower each of the Local Govern-

* S. 73A has been inserted by Act XXII. of 1882, s. 18.

ments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:— Act XVIII. of 1879.

CHAPTER I.

PRELIMINARY.

Short title. Commencement. 1. This Act may be called "The Legal Practitioners Act, 1879," and shall come into force on the first day of January 1880.

Local extent. This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.*

Repeal of enactments. 2. On and from the first day of January 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, &c. All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

References to repealed enactments. All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation clause. 3. In this Act, unless there be something repugnant in the subject or context,—

"Judge:" "Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:

"Subordinate Court:" "Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. XV. of 1882† or Act No. XI. of 1865:

* The Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency (except the Scheduled Districts), with effect from 1st April 1882.—See *Fort St. George Gazette*, Sept. 20, 1881, Pt. I., p. 491; *Ibid*, Dec. 7, 1881, Pt. I., p. 707.

Ch. I., s. 40, sch. ii., and so much of Chaps. III., V., VI., and VII., as relates to pleaders, have been extended to Coorg.—See *Mysore Gazette*, Dec. 6, 1879, Pt. I., p. 355.

The Act has also been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chutia Nagpur Division, namely: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I. p. 504.

† See Act XV. of 1882, s. 2.

Act XVIII. of 1879.

"Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

"Revenue office."

"Legal practitioner" means an advocate, vakíl, or attorney of any High Court, a pleader, mukhtár, or revenue-agent.

"Legal practitioner."

CHAPTER II.

OF ADVOCATES, VAKILS, AND ATTORNEYS.

Advocates and vakíls.

4. Every person now or hereafter entered as an advocate or vakíl on the roll of any High Court under the Letters Patent constituting such Court, or "under section 41 of this Act,"* shall be entitled to practice in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office:

Provided that no such vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency-town.

Attorneys of High Court.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court; and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTÁRS.

Power to make rules as to qualification, &c., of pleaders and mukhtárs.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(*a*) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the

* The words quoted have been substituted for the words, "as an advocate on the roll of the Chief Court of the Panjáb," by Act IX. of 1884, s. 2.

local limits of its appellate jurisdiction, and; in the case of a High Court not established by Royal Charter, of such Court;

(*b*) the qualifications, admission, and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court;

(*c*) the fees to be paid for the examination and admission of such persons; and

(*d*) the suspension and dismissal of such pleaders and mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law: Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Publication of rules.

7. On the admission, under section 6, of any person as a pleader or mukhtár, the High Court shall cause a certificate signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

Certificates to pleaders and mukhtárs.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein, and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead, and act in such Court or office, and in any Court or revenue-office subordinate thereto.

Pleaders on enrolment may practise in Courts and revenue-offices.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits; and, subject to such rules as the High Court may, from time to time, make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure*) appear, plead, and act in any such Criminal Court and any Court subordinate thereto.

Mukhtárs on enrolment may practise in Courts.

* See Act X. of 1882, s. 3.

Act XVIII. of 1879.

No person to practise as pleader or mukhtár unless qualified.

10. Except as provided by this Act, or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead, and act in Munsifs' Courts in suits under Bengal Act VIII. of 1869.

Provided that persons who have been admitted as revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869* (*to amend the procedure in suits between Landlord and Tenant*), or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of mukhtárs.

11. Notwithstanding anything contained in the Code of Civil Procedure,† the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtárs practising in the subordinate Courts, and in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtárs convicted of criminal offence.

12. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss—

any pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,† or

any pleader or mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause:

Provided‡ that, where the party is—

(*a*) a pardánashín woman, or

(*b*) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions, and not receiving any remuneration in respect thereof.†

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* Superseded by Act VIII. of 1885.

† See Act XIV. of 1882, s. 3.

‡ This proviso has been added by Act IX. of 1884, s. 3.

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. * Act XVIII. of 1879.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, "any Judge of a Court of Small Causes of a Presidency-town,"* any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or with the Collector's sanction any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtár charged before him or it under this section.

Suspension pending investigation.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the District Magistrate† and the Sessions Judge;

(*c*) when made by the District Magistrate† be made through the Sessions Judge;

(*d*) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

15. The High Court, in any case in which a pleader or mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

Power to call for record in case of acquittal under section 14.

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* The words quoted have been inserted by Act IX. of 1884, s. 4.

† See Act X. of 1882, s. 3.

Act XVIII. of 1879.

Power to make rules for mukhtárs on appellate side of High Court.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (*a*),* any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications and admission of proper persons to be mukhtárs practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the security which they may be required to give for their honesty and good conduct;

(*d*) the suspension and dismissal of such mukhtárs; and

(*e*) declaring what shall be deemed to be their functions, powers, and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE AGENTS.†

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue Authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission, and certificates of proper persons to be revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers, and duties.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

* See Act XIV. of 1882, s. 3.

† Revenue-agents in Oudh may appear, plead, and act in suits under the Oudh Rent-Act (XIX. of 1868).—See Act XVIII. of 1876, s. 25, and the third clause of s. 2 of this Act.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year. Act XVIII. of 1879.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

No person to act as agent in revenue-offices unless qualified.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Dismissal of revenue-agent guilty of unprofessional conduct.

22. The Chief Controlling Revenue Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day, or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief

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Controlling Revenue Authority; and such authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue Officer not inferior to a Collector, and, with the Collector's sanction, any Revenue Officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue Authority to call for record.

24. The Chief Controlling Revenue Authority, in any case in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

CHAPTER V.

OF CERTIFICATES.

Fee for certificates.

25. Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, "and of such description as the Local Government may from time to time prescribe:"*

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

Dismissed practitioners to surrender certificates.

26. When any pleader, mukhtár, or revenue-agent, is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS, AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue Authority to fix fees on civil and revenue-proceedings.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtár, or attorney upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue-offices by any

* The words quoted have been inserted by Act IX. of 1884, s. 5.

† The words quoted have been added by Act IX. of 1884, s. 6.

party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtár, or revenue-agent. • Act XVIII. of 1879.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

Agreements with clients.

28. No agreement entered into by any pleader, mukhtar, or revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtár, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Power to modify or cancel agreements.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Agreements to exclude further claims.

30. Such an agreement shall exclude any further claim of the pleader, mukhtár, or revenue-agent beyond the terms of the agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

Reservation of responsibility for negligence.

31. A provision in any such agreement that the pleader, mukhtár, or revenue-agent, shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtár, or revenue-agent, shall be wholly void.

CHAPTER VII.

PENALTIES.

On persons illegally practising as pleaders, mukhtárs, or revenue-agents.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár, or revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, &c., failing to deliver certificate.

33. Any pleader, mukhtár, or revenue-agent failing to deliver up his certificate as required by section 26, shall be liable, by order of the Court, Authority, or officer, to which or to whom, or according to whose orders, the delivery

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should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

34. Any pleader, mukhtár, or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

35. Every order under section 32, 33, or 34, shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such Authority.

Penalty for receiving or giving commission.

36. Whoever commits any of the following offences:—

(*a*) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;

(*b*) retains any gratification out of remuneration paid or delivered, or agreed to be paid or delivered, to any legal practitioner for such employment;

(*c*) being a legal practitioner, tenders, gives, or consents to the retention of, any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

MISCELLANEOUS.

Local Government to appoint examiners.

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

38. Except as provided by sections 4, 5, 16, 27, 32, and 36, nothing in this Act applies to advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtárs practising in such Court, or to advocates enrolled "under section 41 of this Act."*

Suspension or dismissal of person holding mukhtár and revenue-agent's certificates.

39. When any person who holds a certificate as a mukhtár under section 7, and a certificate as a revenue-agent under section 18, is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

* The words quoted have been substituted for the words "by the Chief Court of the Punjab" by Act IX. of 1884, s. 7.

Pleaders, &c., not to be suspended or dismissed without being heard.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtár, or revenue-agent, shall be suspended or dismissed under this Act, unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Power for certain High Courts to enrol advocates.

41.* (*1*) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(*2*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(*3*) The High Court may dismiss any advocate so enrolled or suspend him from practice.

(*4*) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Panjáb, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

Repeal of Acts I. of 1846 and XX. of 1853.

42.† Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and date of Enactments.	Title.	Extent of repeal.
Act XX. of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX. of 1865 ...	To amend the Pleaders, Mukhtárs, and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX. of 1866 ...	To extend to the Sadr Court of the North-Western Provinces certain provisions of the Pleaders, Mukhtárs, and Revenue-agents Act, 1865, and of Act No. XXIX. of 1865.	The whole.
Act IV. of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII. of 1877 ...	The Panjáb Courts Act, 1877.	Sections 42, 43, 44, and 45.

* S. 41 has been substituted by Act IX. of 1884, s. 8, for the one originally enacted.

† S. 42 has been added by Act IX. of 1884, s. 9.

Act XVIII. of 1879.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a pleader—

(*a*) In the High Court and any subordinate Court—rupees fifty :

(*b*) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(*c*) In all other subordinate Courts—rupees twenty-five :

(*d*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees fifteen :

(*e*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a mukhtár—

(*f*) In the High Court and any subordinate Court—rupees twenty-five :

(*g*) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h*) In all other subordinate Courts—rupees fifteen :

(*i*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees ten :

(*j*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a revenue-agent—

(*k*) In the office of the Chief Controlling Revenue Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :

(*l*) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :

(*m*) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

ACT XIX. OF 1879.

THE RAIPUR AND KHATTRA LAWS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH OCTOBER 1879.

An Act to amend the Law in force in Thanas Raipur and Khattra.

Preamble.

WHEREAS the territory comprised in the thana of Raipur (including the independent police outpost of Simlapal) and the thana of Khattra has been transferred from the district of Mánbhum to the district of Bankúra;

And whereas the said territory, when included in the district of Mánbhum, formed portion of the Chutiá Nágpur Division, which is a scheduled district under Act No. XIV. of 1874 (the Scheduled Districts Act, 1874);

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankúra; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Raipur and Khattra Laws Act, 1879:"

Commencement.

and it shall come into force at once.

Laws of Bankúra to apply.

2. All enactments which on the first day of October, 1879, were in force in the district of Bankúra and not in the said territory shall be deemed to have come into force in the said territory on that day; and all enactments, which on that day were in force in the said territory and not in the district of Bankúra shall be deemed to have been repealed on and from that day in the said territory.

Other laws repealed.

3. [*Pending proceedings.*] *Repealed by Act XII. of 1891, Sch. I.*

Territory to cease to be a scheduled district.

4. The said territory shall be deemed to have ceased to be a scheduled district on the said first day of October, 1879.

ACT XX. OF 1879.*

THE GLANDERS AND FARCY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH NOVEMBER 1879.

An Act to provide for the better prevention of Glanders and Farcy among Horses.

Preamble.

WHEREAS it is expedient to provide for the better prevention of glanders and farcy among horses; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Glanders and Farcy Act, 1879:"

* Act XX. of 1879 has been extended to the Bombay Presidency by Act XXIV. of 1886.

Act XX. of 1879.

Local extent.

It extends to the whole of British India, except the territories respectively administered by the Governor of Fort St. George in Council * and the Lieutenant-Governor of Bengal;

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"horse:"

"horse" includes also ponies, asses, mules, and jennets:

"diseased."

"diseased" means affected with glanders or farcy.

Local Government may apply the Act.

3. The Local Government may, by notification in the official Gazette, apply this Act, or any provision of this Act, to any local area, to be specified in such notification, within the territories administered by it, and may, in like manner, amend or cancel any such notification.

Local Government to appoint Inspectors.

4. When this Act has been so applied to any local area, the Local Government may, by notification in the official Gazette, appoint, either by name or by virtue of their office, such persons as it thinks fit to be Inspectors under this Act, and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Loca Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

Inspector's power to seize horse.

5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

Power of entry and search given to Inspectors.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building, or other place where he has reason to believe that any such horse is to be found.

Horse to be examined by Veterinary Surgeon.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as scon as possible by such Veterinary Surgeon as the Local Government may from time to time appoint in this behalf.

Horse to be destroyed if found diseased; otherwise restored.

8. If such Surgeon certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Surgeon does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

* In s. 1, the words "the Governor of Bombay in Council," have here been omitted with the view of extending the Act to the Bombay Presidency.—See Act XXIV. of 1886, s. 1.

9. When any diseased horse has been in any building, shed, or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place, or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may from time to time by rule prescribe, destroyed.

When horse diseased, place where it has been to be disinfected, &c.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place, or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of police.

Owner or person in charge of diseased horse to give notice.

11. No person in charge of any horse which has been in the same field, building, or place, or in contact with a diseased horse, shall move such horse, except in good faith for the purpose of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

Prohibition against removal, without license, of horse which has been with diseased horse.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building, or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries, searches, and seizures.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section 9, or who moves any horse in contravention of section 11, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for refusing to comply with notice under section 9; or moving horse contrary to section 11.

14. The Local Government may, from time to time, make rules, consistent with this Act,—

Power to make rules.

(*a*) for regulating entries and searches by Inspectors under this Act;

(*b*) for regulating the destruction of horses certified under section 8 to be diseased, and the disposal of the carcases of such horses;

(*c*) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed;

(*d*) for regulating the grant of licenses under section 11, and the conditions on which such licenses shall be granted; and

(*e*) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Act XXI. of 1879.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

15. [*Repealed by Act XII. of 1891, Sch. I.*]

ACT XXI. OF 1879.*

FOREIGN JURISDICTION AND EXTRADITION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH NOVEMBER 1879.

An Act to provide for the Trial of Offences committed in Places beyond British India and for the Extradition of Criminals.

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by, and dependent on, the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act, and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879."

Extent.

It extends to the whole of British India;

to all Native Indian subjects of Her Majesty beyond the limits of British India; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

and it shall come into force on the passing thereof.

Saving of other laws and of treaty.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

* Act XXI. of 1879 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chutia Nagpur Division:—The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Repeal.

2 The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions, and rules made, and all existing notifications, summonses, warrants, orders, and directions issued, under that Act, shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder. Act XXI. of 1879.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Political Agent."

"Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

"European British subject."

"European British subject" means a European British subject as defined in the Code of Criminal Procedure.*

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor-General in places beyond British India, and delegation thereof.

4. The Governor-General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor-General in Council from time to time thinks fit.

Notification of exercise or delegation of such powers.

5. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Appointment, powers, and jurisdiction of Justices of the Peace.

6. "The Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, to be a Justice of the Peace in or for any such country or place;"† and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure* on Magistrates of the first class who are Justices of the Peace and European British subjects.

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* See Act X. of 1882, s. 3.

† The words quoted have been substituted for 33 words which have been repealed.—See Act XII. of 1891.

Act XXI, of 1879.

The Governor-General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

Confirmation of existing Political Agents and Justices.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April 1872 by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects out of British India.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend—

(*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

9 & 10. [*Repealed by Act X. of 1882, s. 2 and Sch. I (b).*]

CHAPTER IV.

EXTRADITION.

Arrest and removal of persons other than European British subjects escaping into British India.

11. When an offence has been committed or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor-General in Council by a notification in the *Gazette of India*.

Direction and execution of warrant.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants;* and the

* See now Act X. of 1882, Ch. VI. (*B*).

4. A Political Agent issuing a warrant for the arrest of any
rson under s. 11 may in his discretion direct by endorsement
reon that, if such person executes a bond with sufficient
reties for his attendance before the officer mentioned in the
rrant at a specified time, the magistrate to whom the warra
directed shall take such security & release such person
om custody.
e endorsement shall state (a) the number of sureties if a
the amount in which they & the person for whose arrest the
rrant is issued are to be respectively bound, & (c) the time &
ce at which he is to attend before the officer mentioned
warrant.
3. If the person bound by any bond executed under the last
egoing section to appear before the officer mentioned therein does
appear, the magistrate may, on being satisfied as to his default
ue a warrant directing that he be re-arrested & delivered over
ch officer.
C. In the case of every bond required to be executed or which a
ve been executed in accordance with the foregoing provisions p
wers conferred by ss. 513 & 514 of the Code of Criminal Procedure, 18
Court which has required the execution of or has taken a bond
ay be exercised by the magistrate.
Act V of 1916 s. 4.

accused person, when arrested, shall be forwarded to the place, and delivered to the officer named in the warrant. Act XXI. of 1879.

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor-General in Council or by the Governor of the Presidency of Fort St. George in Council, or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

Requisitions for extradition by the executive of any part of British dominions or Foreign Power.

14. Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to enquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said enquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section 10* shall apply to inquiries held under this section.

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section 11, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint, and such evidence as would, in his opinion justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate to inform Political Agent or Local Government.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

* Repealed.—See now Act X. of 1882, s. 189.

Act XXI. of 1879.

Person arrested to be released after certain time if not proceeded against.

16. No person arrested on a warrant issued by a Magistrate under section 15 shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section 11 from the Political Agent for any State for the delivery of such person, or an order with reference to him under section 14 from the Governor-General in Council or Local Government, or such person is, in accordance with law, delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order, the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

Bail.

17. The provisions of the Code of Criminal Procedure in respect of bail* shall apply in the case of any person arrested under section 15 in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.

MISCELLANEOUS.

Power to make rules.

18. The Governor-General in Council may, from time to time, make rules to provide for—

(1) the confinement, diet, and prison-discipline of British subjects, European or native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

Execution of Commissions issued by Foreign Criminal Courts.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.; † and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION 11.

Sections 206, 208, and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310, and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

* See Act X. of 1882, s. 3, and Ch. XXXIX.
† See Act XIV. of 1882, s. 3.

ACT I. OF 1880.*

Act I. of 1880.

RELIGIOUS SOCIETIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH JANUARY 1880.

An Act to confer certain Powers on Religious Societies.

Preamble.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs, and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Religious Societies Act, 1880:"

Commencement.

It shall come into force at once; and

Local extent.

shall extend to the whole of British India;

but nothing herein contained shall apply to any Hindus, Muhammadans, or Buddhists, or to any persons whom the Governor-General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

Appointment of new trustee in cases not otherwise provided for.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body, actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

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* Act I. of 1880 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chutia Nágpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act I. of 1880.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section 17.

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Provision for dissolution of societies, and adjustment of their affairs.

6. Any number not less than three-fifths of the members of any such body as aforesaid may, at a meeting convened for the purpose, determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original Civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Saving of certain provisions of instruments.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be submitted to High Court.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing there-

of may be attended by, such other persons interested in the question as the Court thinks fit. Act I. of 1880.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(*See section 3.*)

Memorandum of the appointment of new trustees of the (*describe the church, chapel, or other buildings and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of 18 , *A. B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*Here insert the same.*)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

First.—Old continuing trustees :—

(*Here insert the same.*)

Second:—New trustees now chosen and appointed :—

(*Here insert the same.*)

Dated this day of 18 .

Signed by the said *A. B.* as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

A. B.,
Chairman of the said Meeting.

C. D.
E. F.

Act II. of 1880.

ACT II. OF 1880.

THE BURMA DISTRICT CESSES AND RURAL POLICE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH JANUARY 1880.

An Act to amend the Law relating to District Cesses and Rural Police in Lower Burma.

Preamble.

WHEREAS it is expedient to make better provision in Lower Burma for the maintenance of rural police and of a local postal service, the construction of works of public utility, sanitary improvement, and the promotion of education;

and whereas it is also expedient to declare and amend the law relating to rural police in the said province; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Burma District Cesses and Rural Police Act, 1880:"

Commencement.

and it shall come into force on such date as the Chief Commissioner of Lower Burma* may, by notification in the local Gazette,† direct.

Local extent.

It extends to all the territories for the time being administered by the said Chief Commissioner:

Provided that the said Chief Commissioner may, from time to time, by notification in the local Gazette, exempt any portion of the said territories from its operation, and cancel such exemption:

Provided also that nothing herein contained applies to any town to which the Burma Municipal Act, 1884,‡ for the time being, extends.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"land-revenue" means revenue assessed upon land under the provisions of the Burma Land and Revenue Act, 1876: and

"revenue-officer" means any person appointed a revenue-officer under the same Act.

Repeal.

3. The following portions of the said Burma Land and Revenue Act, 1876, are repealed (namely): sections 31 and 32, in sections 37 and 46 the words "five per cent. cess," and the word "cess" wherever it occurs in the said Act; but all cesses imposed under that Act shall be deemed to have been imposed under this Act.

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* Since Upper Burma was placed under the administration of the Chief Commissioner of Lower Burma, this officer is styled Chief Commissioner of Burma.—See Proclamation dated Sep. 25, 1886, *Gazette of India*, 25th idem, Pt. I., p. 539.

† Act II. of 1880 came into force on April 1, 1880.—See *Burma Gazette*, March 13, 1880, Pt. II., p. 55.

‡ This Act has been substituted in s. 1 for Act VII. of 1874.—See Act XI. of 1889, s. 100.

Cesses.

Act II. of 1880.

Cess on land.

4. On all lands assessed to land-revenue there shall be levied in addition thereto an annual cess of ten per cent. on the amount of such revenue.

Saving of existing house-tax.

5 In every town, village, or hamlet, in which, at the date on which this Act comes into force, a house-tax is levied, such tax shall continue to be levied.

Cess on houses.

6. The Chief Commissioner may, from time to time, by notification in the local Gazette, direct that in any specified town, village, or hamlet, there shall be levied from the occupier of each house an annual cess to be fixed in manner hereinafter provided, but which shall in no case exceed two rupees:

Provided that such cess shall not be levied—

(*a*) in any place in which the house-tax referred to in section 5 is levied; or

(*b*) in respect of any monastery, pagoda, sacred building, Government-building, public rest-house, or school:

Provided also that, in respect of any house occupied by a person bound to pay cess under section 4, no larger amount shall be levied under this section than will, together with the cess so payable by such person, amount to two rupees.

"House" in this section means any building used as a human dwelling or for the custody of property.

Power to abolish or exempt from cess or tax.

7. The Chief Commissioner may, from time to time, by notification in the official Gazette, direct that any tax or cess levied in any place under section 5 or section 6 shall cease, or that any person or class of persons shall be exempted from the whole or any specified part of such tax or cess.

Powers of Deputy Commissioner.

8. Subject to the other provisions of this Act and to any rules made hereunder and for the time being in force, the Deputy Commissioner of the district may from time to time—

(*a*)* declare what shall, for the purposes of this Act, be held to be a house;

(*b*) fix the amount of cess to be levied in respect of each house;

(*c*) remit such cess in whole or in part.

Purposes to which funds are to be applied.

9. A separate account shall be kept for each district of all cesses and house-tax levied under this Act in such district; and such cesses and tax shall be appropriated in each year in that district, in such proportions as the Chief Commissioner may from time to time direct, to all or any of the following local objects (namely):—

(*a*) the maintenance of the rural police appointed under this Act;

* In places to which ss. 2 to 13 of the Lower Burma Village Act, 1889, are extended, the following should be substituted for s. 9, cl. *a*:—

"(*a*) the remuneration of the headmen and the maintenance of the rural police appointed under the Lower Burma Village Act, 1889."—See Act III. of 1889, s. 4.

Act II. of 1880.

(*b*) the maintenance of a local postal service;

(*c*) the construction and maintenance of district-roads and other communications, and the improvement of river-channels;

(*d*) other works of public utility;

(*e*) sanitary improvement; and

(*f*) the promotion of education:

Provided that the Chief Commissioner may, on the thirty-first day of March in any year, transfer the whole or part of any balance then standing under either of the heads (*b*) or (*c*) in the account of any district to the corresponding head in the account of any other district in the same division.

Time and mode of payment of cesses, &c.

10. All cesses and house-tax levied under this Act shall be payable for the year of assessment of land-revenue as fixed under the Burma Land and Revenue Act, 1876, section 41, and shall be payable at the place at which, and to the person to whom, the land-revenue is from time to time payable, or at such other place, and to such other person, as the Chief Commissioner may direct.

Sums assessed on the amount of land-revenue shall fall due on the date on which the land-revenue falls due.

Sums assessed on houses shall fall due on such dates as the Chief Commissioner may, from time to time, in that behalf direct.

Realization of cesses, &c.

11. All sums assessed under this Act on the amount of any land-revenue may be recovered as if they were part of such revenue.

All other sums payable under this Act may be recovered in the manner prescribed in sections 44 and 45 of the Burma Land and Revenue Act, 1876.

Rural Police.

Rural police.

12.* The rural police shall be of two classes—

(*a*) headmen of hamlets or groups of hamlets, or of villages or towns, or sections of villages or towns, hereinafter called headmen;

(*b*) headmen of circuits, hereinafter called goungs.

Appointment of rural police.

13.* Subject to the rules made under this Act and for the time being in force, the Deputy Commissioner of the district shall have power to appoint, suspend, and remove headmen and goungs, and to fix the limits of the beats of headmen and the circuits of goungs:

Provided that all kyaydangyees and yazawut goungs holding office as such in any local areas on the date on which this Act comes into force shall be deemed to be respectively headmen and goungs appointed under this Act, and such local areas shall be deemed to have been fixed as their beats and circuits respectively under this Act.

Duties of headmen.

14.* Every headman shall perform the following duties (namely):—

(*a*) he shall give immediate information to the goung of the circuit in which his beat is situated, or the officer in charge of the police-station appoint-

* Ss. 12 to 21 will be repealed in those parts of Lower Burma to which ss. 2 to 13 of the Lower Burma Village Act, 1889, are extended,—See Act III. of 1889, s. 1 (*b*).

ed for his beat, of all disputes within his beat which may come to his knowledge, and which are likely to lead to any riot or serious affray :

(*b*) he shall report to the goung or police-officer aforesaid the arrival in, or in the neighbourhood of, his beat of suspicious characters and of persons who have been convicted under the Indian Penal Code, Chapter XII. (*Of offences relating to coin and Government-stamps*) and Chapter XVII. (*Of offences against property*), and the movements of all bad characters within his beat :

(*c*) he shall report to the goung or police-officer aforesaid all breaches of laws and rules relating to excise and opium which occur within his beat, and come to his knowledge :

(*d*) he shall, to the best of his ability, supply any local information which any Magistrate or revenue-officer or officer of police may require, and promptly execute all lawful orders issued to him by, or by authority of, the Deputy Commissioner :

(*e*) he shall attend the revenue-officer of the circle, so long as such officer is within his beat, for the purpose of assessing or collecting land-revenue, cesses, or taxes, and shall give him all available information regarding the cultivation of land and other matters relating to the revenue :

(*f*) he shall, in accordance with such rules as may from time to time be made by the Chief Commissioner, keep up a register of all births, marriages, and deaths within his beat, and collect and register any other vital statistics which may be prescribed by such rules :

(*g*) he shall afford all assistance in his power to Government-officers, and, on the order of the Deputy Commissioner, to other persons, in procuring food, labour, carriage, and other requisites of travel.

Duties of goungs.

15.* The duties of a goung in respect of his circuit shall, *mutatis mutandis*, be the same as those of a headman in respect of his beat.

Power of headmen and goungs to demand help.

16.* For the purpose of preventing the commission of any offence or arresting any offenders whom he is authorized to arrest, any headman or goung may require any male person between the ages of eighteen and sixty within his beat or circuit at the time to assist him in preventing the commission of such offence, or in making such arrest, and in guarding and escorting the person arrested.

Obligation to render help.

Every person as aforesaid shall, in the absence of reasonable excuse, the burden of proving which shall lie upon him, be bound to comply with any requisition made to him under this section.

Powers and duties of police-officers may be conferred and imposed on headmen and goungs.

17.* The Chief Commissioner may, from time to time, by notification in the local Gazette, make rules consistent with this Act—

(*a*) conferring upon headmen and goungs any powers, protection, or privileges which may be exercised or enjoyed by a police-officer under any enactment for the time being in force ;

(*b*) imposing upon headmen and goungs any duties imposed on a police-officer by any enactment for the time being in force ; and

* Ss. 12 to 21 will be repealed in those parts of Lower Burma to which ss. 2 to 13 of the Lower Burma Village Act, 1889, are extended.—See Act III. of 1889, s. 1 (*b*).

Act II. of 1880.

(*c*) regulating the exercise, enjoyment, and discharge of such powers, protection, privileges, and duties by such headmen and goungs.

Penalties for breach of duty.

18.* Every headman or goung who—

(*a*) is guilty of cowardice or of wilful misconduct in his office, or of neglect of duty; or

(*b*) except with the permission of the Deputy Commissioner, withdraws from the duties of his office without having given to the Deputy Commissioner at least two months' notice of his intention to withdraw from such duties; or

(*c*) offers any unnecessary personal violence to any person in his custody,

may, in addition to any other penalty to which he may be liable, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or both.

Bar of prosecution.

No complaint against a headman or goung of any act or omission punishable under this section shall be entertained by any Court unless the prosecution is instituted by order of, or under authority from, the Deputy Commissioner.

Limitation of prosecution.

19.* No prosecution against any person for anything purporting to be done under section 14, 15, or 16, or under any rule made in exercise of the powers conferred by section 17, shall be commenced after the expiration of three months next after the act complained of has been committed.

Notice of suit to be given.

No suit shall be brought for anything so purporting to be done until the expiration of one month next after notice in writing has been delivered at the residence of such person, or at the office of the Deputy Commissioner of the district in which the act was done, stating the cause of suit and the name and place of abode of the plaintiff.

Previous tender of amends.

If any person to whom any such notice of suit is given shall, before such suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Protection to officers acting under warrant.

20.* No prosecution shall be instituted against any headman or goung for any act done by him in such capacity, under the authority of a warrant issued by a Magistrate, notwithstanding any defect of jurisdiction in such Magistrate.

Miscellaneous.

Help in cases of dacoity and robbery.

21.* If, within or in the immediate neighbourhood of any town, village, or hamlet, a dacoity or a robbery is committed or attempted, or dacoits or robbers are harboured, sheltered, or assisted, and if the inhabitants of such town, village, or hamlet, without reasonable excuse, fail to render active assistance in preventing the offence or in arresting and securing the offenders, the Chief Commissioner may, after such enquiry as he deems necessary, impose upon such town,

* Ss. 12 to 21 will be repealed in those parts of Lower Burma to which ss. 2 to 13 of the Lower Burma Village Act, 1889, are extended.—See Act III. of 1889, s. 1 (*b*).

village, or hamlet, or upon any section thereof, a fine, to be assessed upon the inhabitants according to his judgment of their respective means and of the circumstances of the case. Act IV. of 1880.

Powers and duties of revenue-officers.

22 For the purposes of this Act, the Chief Commissioner may, from time to time, by notification in the local Gazette, invest any revenue-officer with any of the powers, and impose on him any of the duties, with which he may invest him, or which he may impose upon him under the Burma Land and Revenue Act, 1876, and the rules framed under it.

Control of Commissioner and Chief Commissioner.

23. All proceedings of any Deputy Commissioner or revenue-officer under this Act shall be subject to control, revision and alteration by the Commissioner to whom he is subordinate, and by the Chief Commissioner.

Power to make rules.

24. The Chief Commissioner may, from time to time, make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

All such rules and all other rules made under this Act shall be published in the local Gazette, and shall thereupon have the force of law.

ACT IV. OF 1880.

THE PORTUGUESE TREATY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH JANUARY 1880.

An Act to give Effect to the Convention between the Governors-General of British India and Portuguese India regarding the Extradition of Criminals, and to the Twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth Article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which, such persons should be delivered up should form the subject of a separate Convention between the Governors-General of British India and Portuguese India to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period:

and whereas, in pursuance of the said Article, the Convention set forth in the schedule hereto annexed has been executed;

and whereas by the twentieth Article of the said Treaty, it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

Act IV. of 1880.

and whereas it is doubtful whether, under the existing law of British India, there is authority to give effect to all the provisions of the said Convention and of the said twentieth Article;

It is hereby enacted as follows:—

Provisions of Convention to be followed.

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

Procedure.

The procedure prescribed in the Code of Criminal Procedure* shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

Execution of Commissions issued by Portuguese Criminal Courts.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.,† and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal.

Short title.

3. This Act may be called "The Portuguese Treaty Act, 1880."

THE SCHEDULE.

Whereas, by the nineteenth Article of a Treaty dated the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same Article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty,

In pursuance of the said Article, the undersigned Governors-General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties) have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(*a*) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

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* See Act X. of 1882, s. 3.
† See Act XIV. of 1882, s. 3.

(*b*) The crimes for which the extradition shall be granted are the following:— Act IV. of 1880.

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act ...	299 to 304A	Voluntary homicide, including—	349
		Parricide	355
		Poisoning	353
		Infanticide	356
		And involuntary homicide caused by negligence	368
Attempt to commit murder or culpable homicide ...	307, 308, 511	Attempt at homicide ...	350; 6 to 11
Voluntarily causing hurt or grievous hurt	319 to 333, 335, and 338	Wounding, causing contusions or hurts	359 to 367, 369
		Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378.	
Rape	375 and 376	Rape	394, 395 to 397
Kidnapping, abduction, concealing kidnapped person, slave-dealing, or selling minors for immoral purposes	360 to 373	Kidnapping and hiding of minors	342 to 344
Immodest assault on a woman	354	Immodest assault on a woman	391
Causing miscarriage and abortion	312 to 316	Abortion	358
Exposure or abandonment of a child	317	Exposure or abandonment of a child	345 to 348
Thefts	378 to 382	Thefts	421; 424 to 431
Extortions, robberies, dacoities, attempts to commit robbery, and belonging to a gang of thieves ...	383 to 402	Robbery	432 to 444
Criminal misappropriations and criminal breaches of trust	403 to 409	Theft	313; 422 to 425; 453
Receiving stolen property	410 to 414	Receiving stolen property	463
Cheating	415 to 420	Cheating, false pretences	450 to 452; 456

Act IV. of 1880.

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Lurking house-trespass, house-breaking	443 to 446	House-breaking	380, clause 1
Fraudulent bankruptcy and fraudulent disposition of property	206, 208, 421 to 424	Fraudulent bankruptcy and fraudulent disposition of property	447 to 449; 455
Dishonest opening of closed receptacle containing property	461 and 462	Dishonest opening or breaking of seals by public servants and others ...	310 to 312
Being a thug	310, 311	Association of malefactors	263
Belonging to a band of dacoits or robbers ...	400, 401		
Aggravated cases of wrongful confinement	344 to 348	Aggravated cases of wrongful confinement	331 to 333
Mischief by fire or explosive substance	435, 436, and 438	Arson	466 to 474
Mischief to a vessel, or after preparation to cause death, hurt, or wrongful restraint	437, 439, 440	Aggravated cases of mischief	475 and 481
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	230 to 254	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes	206 to 214
Counterfeiting or fraudulently using of Government-stamps issued for purposes of revenue ...	255 to 263	Counterfeit or fraudulent using of Government-stamps or stamped paper	228 and 229
Forgery and using of forged documents, and making of seals for fraudulent purposes	463 to 468; 470 to 477	Forgery and using of forged documents, and making of seals for fraudulent purposes	215 to 217; 219 to 223; 230 and 231
Use of false trade-mark or property-mark, and frauds connected with such marks	478 to 489	Use of false trade-mark or property-mark, and frauds connected with such marks	230 and 231
Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same	238 to 240

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Illegal gratification taken by a public servant, or to influence a public servant	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant	314 to 323, 452
Causing the evidence of the commission of any offence to disappear ...	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear ...	464
False certificate or declaration made by public servant, or used by any person as evidence ...	197 to 200	False certificate or declaration made by public servants or used by any person as evidence	216 to 218; 221 and 222
Escape from lawful custody on accusation or conviction of any crime specified in this Convention ...	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention	190 to 196
Crimes against other Laws.			
Piracy by law of nations ...		Piracy	162
Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm ...		Voluntary homicide, as above	349, 353, 355, 356
		Portuguese Maritime Code	
Sinking or destroying a vessel at sea, or attempting or conspiring to do so		Loss or destruction of vessel, caused by a person on board	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master		Act of revolt committed by more than third of crew	46

Act IV. of 1880.

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation, or attempt be punishable by the laws of both the High Contracting Parties.

(*c*) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(*d*) The Governor-General of British India will, from time to time, communicate to the Governor-General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(*e*) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishments shall be fulfilled according to priority of date of sentence.

(*f*) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State applied to.

(*g*) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(*h*) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed:—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(*i*) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India:

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime com-

mitted in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *primâ-facie* proof of facts which constitute a crime, for which extradition may be granted under clause (*b*) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(*j*) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of he offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(*k*) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(*l*) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party ;

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest ;

or on demand made by the Magistrate or police-officer of the other party who has pursued the accused across the frontier ;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(*m*) Every such Magistrate or police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and, without waiting for the orders of higher authority, shall make all necessary searches, in-

Act IV. of 1880.

quiries, pursuits, arrests, and recoveries of stolen property, in accordance with the local law of criminal procedure.*

The Magistrate or police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or police-officer, but shall act in subordination to the local Magistrates or police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests, and recoveries of stolen property.

(*n*) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(*o*) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(*p*) The expenses occasioned by the arrest, imprisonment, maintenance, and transport of criminals, and the conveyance of articles, shall, within the dominions, and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found; the expenses by sea and beyond the frontier shall be defrayed by the other party.

(*q*) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities irrespective of the nationality of the complainant, in accordance with the local laws.

(*r*) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense, or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that

* See Act X. of 1882.

the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused. Act V. of 1880.

(*s*) If, within two months after receipt of notice of the arrest, no requisition for extradition or complaint, or application for a trial, shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport, and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party:

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that, after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(*t*) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord, one thousand eight hundred and eighty.

LYTTON,
Viceroy and Governor-General of British India.

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor-General of Portuguese India.

ACT V. OF 1880.*

THE BURMA BOUNDARIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 20TH FEBRUARY 1880.

An Act to provide for the Demarcation of Land and for the Establishment and Maintenance of Boundary-marks in British Burma.

Preamble.

WHEREAS it is expedient to provide for the demarcation of land and for the establishment and maintenance of boundary-marks in British Burma; It is hereby enacted as follows:—

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* Act V. of 1880 has been extended, under s. 5 of the Scheduled Districts Act (XIV. of 1874), to the whole of Upper Burma, except the Town of Mandalay, to which the Act has already been extended, and the Shan States.—See Notification No. 23, dated June 20, 1887 (No. 505F, dated June 3, 1887), published in *Burma Gazette*, June 25, 1887, Pt. I., p. 242, and *Gazette of India*, 4th *idem*, Pt. I., p. 256.

Act V. of 1880.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Burma Boundaries Act, 1880:"

Local extent.

It extends to the territories * for the time being administered by the Chief Commissioner of Lower Burma; *

Commencement.

and it shall come into force at once.

Power to appoint demarcation and boundary-officers.

2. The Local Government may, from time to time, appoint persons, by name or by virtue of their office, to be demarcation-officers and boundary-officers, and may suspend or remove any person so appointed:

Functions of such officers.

Every person so appointed shall, subject to the control of the Local Government, and of any superior officer appointed by it in this behalf, exercise and perform, within such local limits as the Local Government may, from time to time, direct, the powers conferred, and the duties imposed, by this Act or the rules made hereunder, on such officers respectively.

CHAPTER II.

DEMARCATION OF BOUNDARIES.

A.—Proceedings of Demarcation-officers.†

Power to direct demarcation of boundaries.

3. The Local Government may, whenever it thinks fit, by a notification in the official Gazette, direct that the boundaries of any land shall be demarcated by a demarcation-officer.

Power to enter on land to effect demarcation.

4. On the publication of any such notification, a demarcation-officer appointed by the Local Government in this behalf may enter upon the land specified therein, and make all enquiries, and do all other things necessary for demarcating the boundaries of the said land.

Publication of general notice.

5. The demarcation-officer shall cause to be published a general notice addressed* to all persons owning, occupying, or otherwise interested in the said land, and the land marching therewith, and to all persons employed on or connected with the management of such land, calling upon them to attend, either personally or by agent, before him, at such places and at such times as may be stated in such notice, for the purpose of pointing out the boundaries, and of rendering such aid as may be necessary in setting up or repairing the boundary-marks,

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* The territories are now known as Lower Burma [see Act XX. of 1886, s. 2 (*1*) (*b*)]; and the Chief Commissioner is styled Chief Commissioner of Burma (see Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt I., p. 539).

† For power to invest any Forest Officer in Lower Burma and in Upper Burma with the powers of a Demarcation Officer under this Act, see Act XIX. of 1881, s. 70 (*a*), and Reg. VI. of 1887, s 68 (*1*) (*a*).

and of affording such other assistance and information as may be needed for the purposes of the demarcation. Act V. of 1880.

The persons to whom such notice is addressed shall not be legally bound to attend.

Power to issue special notice to procure attendance.

6. The demarcation-officer may also cause a special notice to be served on any of the persons mentioned in section 5, requiring such person to attend, personally or by agent, before him on or before a specified date, at such places, and for such of the purposes aforesaid, as may be stated in such notice; and every person upon whom such special notice may be served shall be legally bound to attend as required by the notice, and, so far as he may be able, to do any of the things mentioned therein.

Clearing of boundary-lines.

7. The demarcation-officer may cause a special notice to be served on any owner or occupier of the said land, requiring such owner or occupier to clear any boundary or other line which it may be necessary to clear for the purposes of the demarcation of such land, by cutting down and removing any trees, jungle, fences, or standing crops, or to provide labour by furnishing flag-holders, or otherwise to assist in the demarcation of such land; and, if it is necessary to employ hired labour for these or other similar objects incidental to the demarcation, the demarcation-officer may assess and recover from such owner or occupier the cost of such labour.

Compensation for injury done by clearance.

8. If any demand for compensation is made in respect of the clearance of any line in accordance with a requisition under section 7, the demarcation-officer shall determine and record the value of any trees, jungle, fences, or standing crops which may have been cut down or removed, and shall pay or tender to the owners thereof the amount of compensation which, in his opinion, should be allowed therefor.

Any dispute arising concerning the sufficiency of the amount so paid or tendered shall be determined by the Deputy Commissioner upon application made to him for that purpose by either of the disputing parties.

Power to summon person to give information or produce document.

9. The demarcation-officer may issue a special notice, calling upon any person who, he has reason to believe, can give any information respecting the boundaries of the land, or in whose possession or power any document relating to such boundaries is alleged to be, to attend before him, and give such information or produce such document, on a date and at a place to be mentioned in the notice.

Every person on whom any such notice is served shall be legally bound to attend, and to give such information, or to produce such document as required by the notice.

Demarcation-officer to mark out boundaries, and submit report to boundary-officer.

10. The demarcation-officer shall, after making such inquiry as he thinks fit, mark out the boundaries of the land, and may cause boundary-marks, of such materials, in such number, and in such manner, as he thinks fit, to be erected by the owners or occupiers of the land, or may erect such marks, and charge the cost of such erection to such owners or occupiers, and shall forward a report of his proceedings to the boundary-officer:

Act V. of 1880.

When demarcation-officers may alter demarcation.

Provided that, at any time before forwarding his report to the boundary-officer, the demarcation-officer may, for any sufficient reason to be stated in such report, alter any boundary marked out by him.

B.—Proceedings of Boundary-officers.

General notice to persons affected.

11. The boundary-officer shall, on receipt of the report of the demarcation-officer, cause a general notice to be published informing all persons concerned that such report is open to inspection, and requiring any person who may have any objections to make thereto to submit a written statement of such objections within one month from the date of the publication of such notice.

Special notice to persons likely to object.

Whenever the boundary-officer has reason to believe that any person interested is likely to object to any boundary as laid down in such report, he shall cause a special notice to be served on such person, requiring him to submit, within the said period of one month, a written statement of his objection.

Statements of objections.

No person shall be entitled as of right to submit any statement of objection after the expiration of the said period of one month; but it shall be in the discretion of the boundary-officer to admit any such statement after the expiration of such period and before the order next hereinafter mentioned has been made.

Order of boundary-officer.

12. When the said period of one month has expired, and the objections (if any) made within it or subsequently admitted by the boundary-officer have been inquired into by him, and any further inquiry which he may deem necessary has been made by him, the boundary-officer shall pass such order as he thinks fit, confirming or modifying the boundaries as determined by the demarcation-officer.

If any objection seems to him not to be well-founded, the boundary-officer may direct that all expenses of the inquiry which have arisen from such objection shall be recovered from the person who made the same.

Objections if subsequently made how dealt with.

13. When any person, within sixty days from the date of the order passed under section 12, makes any objection to the correctness of the demarcation-proceedings, the boundary-officer may, in his discretion, either refuse to inquire into such objection, or may require the person making the same to deposit, within a reasonable time, the estimated costs of any further inquiry which it may be necessary to make in respect thereof.

Boundary-officer to make further inquiry.

14 If the costs of such further inquiry are deposited, the boundary-officer shall, after making such inquiry, pass an order rejecting such objection, or admitting the same, and amending the order passed under section 12.

If, on such inquiry, the objection seems to the boundary officer not to be well-founded, he may pass such order as he thinks fit in respect of the recovery from the person making the objection, of any sum expended on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other person on account of such inquiry.

No person making an objection under section 13 shall, unless the boundary-officer specially so directs, recover any portion of the amount deposited by him under section 13.

Act V. of 1880.

Power to enforce attendance of witnesses, &c.

15. For the purposes of any inquiry under this Act, the boundary-officer shall, in addition to the powers conferred specially by this Act, have all the powers of a demarcation-officer, and also power to summon and enforce the attendance of witnesses, and compel the production of documents, so far as may be, by the same means and in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.*

Power to refer dispute to arbitration.

16. The boundary-officer, whenever he thinks fit, may, with the consent of the parties concerned, refer to arbitration any dispute as to a boundary.

The procedure laid down in Chapter XXXVII. of the Code of Civil Procedure† shall apply (so far as may be) to such references.

Effect of orders of boundary-officer.

17. The order passed by the boundary-officer under section 12, or, when such order is amended under section 14, such amended order, shall, unless and until it be reversed or modified in manner hereinafter provided, be conclusive.

C.—Appeals from Orders of Boundary-officers.

Orders appealable to Commissioner.

18. An appeal shall lie to the Commissioner of the Division from every order passed by a boundary-officer under section 12, section 13, or section 14.

Decision when final.

19. If the Commissioner confirms the order of the boundary-officer on a matter of fact, such decision shall be final and conclusive.

Second appeal when allowed.

In all other cases in which the Commissioner confirms the order of the boundary-officer, and in all cases in which the Commissioner reverses or modifies the order of the boundary-officer, an appeal shall lie to the Judicial Commissioner, or, when the land comprised in the order is situated within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, to such Recorder.

Period of limitation.

20. The period of limitation for an appeal under section 18 or section 19 shall run from the date of the order or decision appealed against, and shall be as follows, that is to say:—

(*a*) in the case of an appeal under section 18—sixty days;

(*b*) in the case of an appeal under section 19—ninety days.

In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

Powers of Commissioner, &c.

21. The Commissioner, the Judicial Commissioner, and the Recorder of Rangoon shall, in hearing and determining appeals presented under this Act, have, as nearly as may be, the same powers as they have in the case of appeals from decrees and orders in civil suits.

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* Now Act XIV. of 1882.—See s. 3 of that Act.

† Chapter XXXVII. of the old Code corresponds to the same chapter in the new Code.

Act V. of 1880.

D.—Boundary-marks.

When permanent boundary-marks are to be erected.

22. Whenever an order determining a boundary has become final, the boundary-officer shall, unless permanent boundary-marks of a suitable description have already been erected along such boundary, cause to be erected permanent boundary-marks, of such materials, in such number, and in such manner, as he may consider sufficient to distinguish such boundary.

An order determining a boundary becomes final for the purposes of this section when it is not open to appeal.

Apportionment of expense of erection of marks.

23. All expenses incurred by the boundary-officer in erecting such boundary-marks for any land shall be apportioned amongst the owners or occupiers of such land, in such proportions as the boundary-officer may think fit.

Notice to owners to pay share of expense.

24. When the expenses have been apportioned amongst such owners or occupiers, the boundary-officer shall cause a notice to be served on each of them, specifying the amount payable by him in respect of such expenses, and requiring him to pay such amount to the boundary-officer within one month from the service of such notice.

Power to place marks under charge of owners and occupiers.

25. The boundary-officer may further cause a notice to be served on any owner or occupier, placing under his charge any boundary-marks erected on the boundary of his land, whether by order of such officer or otherwise.

Every owner or occupier shall preserve such boundary-marks as may be placed under his charge under this section, and shall give immediate notice to the nearest Magistrate or the officer in charge of the nearest police-station if any such marks are injured, destroyed, or removed, or require repairs.

Duty to preserve boundary-marks.

Duty to give notice of any injury occurring to them.

Power to re-erect and repair boundary-marks.

26. Whenever a Magistrate of the first or second class becomes aware that any mark erected under this Act within the local limits of his jurisdiction has been injured, destroyed, or removed, or requires repairs, such Magistrate may cause such mark to be re-erected, restored, or repaired, and may recover any expenses incurred in respect of such re-erection, restoration or repair from the owner or occupier who is bound, under section 25, to preserve such mark.

Duties of village-officers.

27. It shall be the duty of every village-headman and thoogyee—

(*a*) to prevent the destruction, injury, or alteration of any boundary-mark within the local limits of his jurisdiction;

(*b*) whenever he becomes aware that any such mark has been destroyed, injured, or altered, to report immediately to the officer in charge of the nearest police-station or to the nearest Magistrate such destruction, injury, or alteration.

CHAPTER III.

MISCELLANEOUS.

Survey-officer.

28. When any officer is appointed by the Government to make a survey of any land, the Chief Commissioner may invest such officer, for the purposes of such survey, with

all or any of the powers conferred on demarcation-officers by sections 4 to 9 (both inclusive), and also with power to cause any boundary or other marks to be erected by the owners or occupiers of any land, or to erect such marks, and to charge the cost of such erection to such owners or occupiers. Act V. of 1880.

Power to perform order under Act at expense of person disobeying it.

29. If any owner or occupier of any land, or any other person, being ordered, in accordance with the provisions herein contained, to perform any act, fails to perform such act within a reasonable time, the officer who gave the order may, after giving notice to such owner, occupier, or other person of his intention so to do, cause the act to be performed; and the expenses incurred in such performance shall be payable by such owner, occupier, or other person.

Penalty for refusing or neglecting to comply with orders or notice.

30. Whoever, being legally bound to comply with any lawful order under this Act, or with the requisition contained in any special notice served upon him under this Act, refuses or neglects to comply therewith, shall be punished with fine which may extend to fifty rupees.

Recovery of amounts due under Act.

31. Every amount due under the provisions of this Act may be recovered as if the same were an arrear of land-revenue.

Power to make subsidiary rules.

32. The Chief Commissioner may, from time to time, make rules consistent with this Act—

(*a*) for the collection and record of any information in respect of any land;

(*b*) prescribing and limiting the powers and duties of officers conducting proceedings under this Act;

(*c*) regulating the delegation by such officers to subordinate officers of the powers and duties conferred and imposed on them respectively by this Act or the rules made hereunder;

(*d*) for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Act;

(*e*) for the publication, issue, and service of all notices, whether general or special, to be published, issued, or served under this Act; and

(*f*) for carrying out generally the purposes of this Act.

Mode of publication.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Acts IX. & XII. of 1880.

ACT IX. OF 1880.

THE BOMBAY CIVIL COURTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH APRIL 1880.

An Act to amend the Bombay Civil Courts Act, 1869.

WHEREAS it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows :— Preamble.

Short title. **1.** This Act may be called "The Bombay Civil Courts Act, 1880:"

Commencement. and it shall come into force at once.

Insertion of a new section after section 22 of the Bombay Civil Courts Act. **2.** In the said Act, after section 22, the following section shall be inserted :—

22A. [*See. Vol. I., p. 791.*]

3. [*Repealed by Act XII. of 1891, Sch. I.*]

ACT XII. OF 1880.

THE KAZIS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JULY 1880.

An Act for the Appointment of Persons to the Office of Kází.

WHEREAS, by the preamble to Act No. XI. of 1864* (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law Officers and to the offices of Kází-ul-Kazáat and of Kází, and to abolish the former offices*), it was (among other things) declared that it was inexpedient that the appointment of the Kází-ul-Kazáat, or of City, Town, or Pargana Kázís, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas, by the usage of the Muhammadan community in some parts of British India, the presence of Kázís appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kází; It is hereby enacted as follows :—

Short title. **1.** This Act may be called "The Kázís Act, 1880;"

Commencement. and it shall come into force at once.

Local extent. It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Local Government may, from time

* Repealed by Act VIII. of 1868.

to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.* Act XII. of 1880.

Power to appoint Kázís for any local area.

2. Whenever it appears to the Local Government that any considerable number of the Muhammadans, resident in any local area, desire that one or more Kázís should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons, and appoint him or them to be Kázís for such local area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is, for a continuous period of six months, absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses, or becomes in the opinion of the Local Government, unfit, or personally incapable, to discharge the duties of the office.

Naib Kázís.

3. Any Kází appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed.

When any Kází is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers; or

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(*a*) to confer any judicial or administrative powers on any Kází or Naib Kází appointed hereunder; or

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* Act XII. of 1880 has been extended to the following places:—

In the Bombay Presidency, the Ahmadnagar District.—See *Bombay Government Gazette*, March 23, 1882, Pt. I., p. 218.

The Province of Sindh.—See *Bombay Government Gazette*, Dec. 20, 1883, Pt. I., p. 1002.

In the Lower Provinces, the Districts of Backergunge, Bogra, Chittagong, Dacca, Dinagepore, Furreedpore, Jessore, Mymensingh, Noakhally, Nuddea, Rajshahye, Rungpore, Pubna, and Tipperah.—See *Calcutta Gazette*, June 4, 1884, Pt. I., p. 660.

In the Panjab, the Amritsar, Lahore and Rawalpindi Divisions, the trans-Indus portion of the Derá Ismail Khán District, and the District of Derá Gházi Khán.—See *Panjab Gazette*, Feb. 23, 1882, Pt. I., p. 106, and March 15, 1883, Pt. I., p. 99.

In British Burma, the Akyab District.—See *British Burma Gazette*, Aug. 20, 1882, Pt. I., p. 293.

In Assam, the Districts of Silhát and Káchar.—See *Assam Gazette*, Aug. 20, 1881, Pt. I., p. 314, and Dec. 16, 1882, Pt. I., p. 852.

It has also been extended to various individual towns, parganas, and other small areas in the Bombay Presidency, the North-Western Provinces, and Oudh.

Act XIII. of 1880.

to render the presence of Kází necessary; or

(*b*) to render the presence of a Kází or Naib Kází necessary at the celebration of any marriage or the performance of any rite or ceremony; or

to prevent any one acting as Kází.

(*c*) to prevent any person discharging any of the functions of a Kází.

ACT XIII. OF 1880.

THE VACCINATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JULY 1880.

An Act to give Power to prohibit Inoculation, and to make the Vaccination of Children compulsory, in certain Municipalities and Cantonments.

Preamble.

WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory, in certain municipalities and cantonments; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Vaccination Act, 1880;" and

Application.

it shall apply* only to such municipalities and cantonments situate in the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Lower Burma, Assam, Ajmer, and Coorg, as it may be extended to in manner hereinafter provided.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) the expression "Municipal Commissioners" means a body of Municipal Commissioners or a Municipal Committee constituted under the provisions of any enactment for the time being in force:

(2) "parent" means the father of a legitimate child and the mother of an illegitimate child;

(3) "guardian" includes any person who has accepted or assumed the care or custody of any child:

(4) "unprotected child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination;

(5) "inoculation" means any operation performed with the object of producing the disease of small-pox in any person by means of *variolous matter*:

(6) "vaccination-circle" means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination;

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* In the Panjab the Act has been applied to the Municipalities of Amritsur and Simla.—See Notification Nos. 925 and 486, *Panjáb Gazettes*, dated Dec. 18, 1884, and Oct. 6, 1887, Pt. I., pp. 1227 and 548, respectively.

† The territories are now known as Lower Burma [see Act XX. of 1886, s. 2 (*1*) (*b*)]; and the Chief Commissioner is styled Chief Commissioner of Burma (see Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539).

(7) "vaccinator" means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorized by the Local Government, in manner hereinafter provided, to perform the same operation; and includes a "Superintendent of Vaccination;" Act XIII. of 1880.

(8) "vaccination-season" means the period from time to time fixed by the Local Government for any local area under its administration by notification in the official Gazette, during which alone vaccination may be performed under this Act.

Extension of Act to municipalities.

3. A majority in number of the persons present at a meeting of the Municipal Commissioners specially convened in this behalf may apply to the Local Government to extend this Act to the whole or any part of a municipality, and thereupon the Local Government may, if it thinks fit, by notification published in the official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the Secretary to the Local Government, and the Local Government shall take such objection into consideration. When six weeks from the said publication have expired, the Local Government, if no such objections have been sent as aforesaid, or (when such objections have been so sent), if, in its opinion, they are insufficient, may, by like notification, effect the proposed extension.*

Extension to cantonments.

4. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend this Act to the whole or any part of a military cantonment.†

Power to withdraw local area from operation of Act.

5. The Local Government may, by notification in the official Gazette, withdraw any local area in a municipality or, with the previous sanction of the Governor-General in Council, any local area in a cantonment from the operation of this Act.

Prohibition of inoculation.

6. In any any local area to which the provisions of this Act apply, inoculation shall be prohibited; and

Inoculated persons not to enter, without certificate, local area subject to Act.

no person who has undergone inoculation shall enter such area, before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner, of such class as the local Government may from time to time, by written order, authorize to grant such certificates, stating that such person is no longer likely to produce small-pox by contact or near approach.

Vaccination-circles;

7. Every local area to which this Act applies shall be a vaccination-circle, or shall, in manner hereinafter provided, be divided into a number of such circles;

* In Burma the Act has been extended, under s. 3, to the Municipalities of Akyab, Rangoon, Moulmein, Bassein, Henzada, Toungoo, and Thayetmyo.—See *Burma Gazette*, July 21, 1883, April 26, 1884, Aug. 15, 1885, Sep. 22, 1888, Jan. 5, 1889, and May 11, 1889, Pt. I., pp. 223, 95, 275, 436, 10, and 221, respectively.

† The Act has also been extended under s. 4 to the Cantonments of Moulmein and Rangoon.—See *Burma Gazette*, Sep. 19, 1885, and April 16, 1887, Pt. I., pp. 306 and 176 respectively.

Vaccinators; one or more vaccinators shall be appointed, in manner hereinafter provided, for each such circle and

Superintendent of Vaccination. one or more Superintendents of Vaccination shall be appointed, in manner hereinafter provided, for each such local area.

8. The Local Government may, by written license, authorize private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such license.

Private vaccinators.

9. When any unprotected child, having attained the age of six months, has resided, for a period of one month during the vaccination-season, in any local area to which the provisions of this Act apply, and has not, at the expiration of such period, attained the age, if a boy, of fourteen years, and, if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Unprotected children to be vaccinated.

Such vaccinator shall vaccinate the child, and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season.

Vaccinator to vaccinate children, or deliver certificates of postponement.

10. The parent or guardian of every child which has been vaccinated under section 9 shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator; and

Inspection after vaccination.

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected, and the result of such inspection.

11. When it is ascertained, at the time of inspecting a child under section 10, that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Procedure when vaccination is successful.

12. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner hereinbefore provided.

Procedure when vaccination is unsuccessful.

13. A certificate granted under section 9, showing the unfitness of a child for vaccination, shall remain in force for the period stated therein; and, on the termination of that period, or, if that period terminates after the vaccination-season is over, when the next vaccination-season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator;

Procedure when child is unfit for vaccination.

Provided that, if the child is still found to be in a state unfit for vacci- Act XIII. of 1880.
Renewal of postponement-certificates. nation, the certificate granted under section 9 shall be renewed.

14. If the Superintendent of Vaccination is of opinion that a child, which has been three times unsuccessfully vaccinated, is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such child a certificate under his hand to that effect; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.
Certificates of insusceptibility of successful vaccination.

15. The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act:
What lymph to be used.

Provided that,

1st, if animal-lymph is so prescribed, and the parent or guardian of any child desires that such child shall be vaccinated with human lymph, it shall be so vaccinated; and,

2nd, if, in any local area in which animal-lymph is procurable, human lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated.

16. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act:
No fee to be charged except by private vaccinator.

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed.
Proviso.

17. The Superintendent of Vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence, have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound, by the provisions hereinbefore contained, to procure the vaccination of such child, or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.
Duties of Superintendent of Vaccination.
Notice to parent or guardian neglecting to comply with Act.

18. If such notice is not complied with, the Superintendent of Vaccination shall report the matter to the Magistrate of the District or such Magistrate as the Local Government or the Magistrate of the District may, from time to time, appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child, and demand his explanation, and shall, if
Order by Magistrate when notice not complied with.

Act XIII. of 1880.

such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

Procedure when order not obeyed.

If, on such date, the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and, unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section 22.

Magistrates to be non-official Natives.

The Magistrates appointed under this section shall, as far as is conveniently practicable, be natives of India, and not paid servants of the Government.

Power to make rules for municipalities.

19. When this Act has been applied to any municipality or any part thereof, the Municipal Commissioners may, from time to time, make rules, consistent with this Act, for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law* for the time being in force, the Commissioners make rules or bye-laws for the regulation of other matters within the limits of the municipality, and shall, when confirmed by the Local Government, and published in the official Gazette, have the force of law:

Provided that the Local Government may at any time rescind or modify any such rule.

Power to make rules for cantonments.

20. When this Act has been applied to any cantonment or any part thereof, the Local Government may, from time to time, subject to the control of the Governor-General in Council, make such rules.

What, rules under sections 19 and 20 may provide for.

21. The rules to be made for any local area under section 19 or 20 may, among other matters, provide for—

(*a*) the division of such local area into circles for the performance of vaccination;

(*b*) the appointment of a place in each vaccination-circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station;

(*c*) the qualifications to be required of public vaccinators and Superintendents of Vaccination;

(*d*) the authority with which their appointment, suspension, and dismissal shall rest;

(*e*) the time of attendance of public vaccinators at the vaccine-stations and their residence within the limits of the vaccination-circles;

(*f*) the distinguishing mark or badge to be worn by them;

(*g*) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties;

(*h*) the facilities to be afforded to people for procuring the vaccination of their children at their own houses;

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* For the law relating to Municipalities in the N.-W. P. and Oudh, see Acts XV. of 1873 and XV. of 1883; and for the law relating to Municipalities in the Central Provinces, see Act XVIII. of 1889.

(*i*) the grant and form of certificates of successful vaccination, of unfitness for vaccination, or of insusceptibility of vaccination; Act XIII. of 1880.

(*j*) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph;

(*k*) the fee to be paid for vaccination with animal-lymph under section 15;

(*l*) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination-circle at the request of the parent or guardian of the said child;

(*m*) the preparation and keeping of registers showing—

the names of children born in such local area on or after the date of the application of this Act;

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls;

the names of unprotected boys and girls, respectively under those ages, brought within such local area at any time after the application of this Act, and who have resided there for a month;

the result of each vaccination or its postponement, and the delivery of certificates, if any;

(*n*) the assistance to be given by the Municipal Commissioners and municipal servants in the preparation of these registers, and in other matters; and

(*o*) the preparation of vaccination-reports and returns.

Punishment of offences.

22. Whoever commits any of the undermentioned offences (that is to say):—

(*a*) violates the provisions of section 6,

(*b*) neglects, without just excuse, to obey an order made under section 18,

(*c*) breaks any of the rules made under section 19 or 20, or

(*d*) neglects, without just cause, to obey an order made under section 18 after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say):—

in the case of the offence mentioned in clause (*a*), with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both;

in the case of the offences mentioned in clauses (*b*) and (*c*), with fine which may extend to fifty rupees; and

in the case of the offence mentioned in clause (*d*), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Municipal funds to receive fines and meet expenditure.

23. The amount of all fees and fines realized, and the amount of all expenditure incurred, under this Act, in any municipality, shall, respectively, be credited to, and paid from, the municipal fund.

Acts XV. & XVI. of 1880.

ACT XV. OF 1880.

THE BOMBAY REVENUE JURISDICTION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 3RD NOVEMBER 1880.

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing;* It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1880;" and it shall come into force at once.

Repeal of sections 8, 9, 10, and 17 of Act No. X. of 1876.

2. Sections 8, 9, 10, and 17 of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed:

Provided that the repeal hereby effected, of the first clause of the said section 17, shall not operate in any Scheduled District unless and until the Bombay Land-revenue Code, 1879, has been extended to such district:

Provided also that the repeal of the second clause of the said section 17 shall not be deemed to render invalid or illegal anything made valid or legal by such clause.

Addition to section 32 of Act No. XIV. of 1869 as amended by section 15 of Act No. X. of 1876.

3. To section 32 of the Bombay Civil Courts Act, No. XIV. of 1869, as amended by section 15 of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added:—

[*See Vol. I., p. 793.*]

4, 5. [*Repealed by Act XII. of 1884, s. 3.*]

ACT XVI. OF 1880.

THE MADRAS IRRIGATION AND CANAL COMPANY'S ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH DECEMBER 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals, and goods, as should not exceed the rates, tolls, or fares which should be defined and sanctioned by an Act of the Indian Legislature; and that the Company should not in any case

* In the preamble certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

charge any higher tolls, fares, or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals, and goods; Act XVI. of 1880.

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals, and goods upon, and the use, management, and working of, its canal; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;"

Commencement.

and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say:—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal, and for registering vessels so licensed, and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and,

(*c*) generally, for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council, and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and in each vessel employed by the Company in conveying passengers, animals, or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section 6 are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Act XVI of 1880.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted, or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

THE SCHEDULE—(*see section 2*).

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile	14·4
Second class, per ditto, ditto	5·9
Third class, per ditto, ditto ... { Mail (fast) ...	3·2
ditto ... { Ordinary ...	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile	14·4
	Annas.
Cattle, horses, and mules, per 10 or fraction of 10, per ditto	6·0
Calves needing only half the space of a cow, to be reckoned as *half*.	
Sheep, goats, and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs, if conveyed at all, will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway), per ton, per mile or fraction of a mile	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway), per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway), per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles ...	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „ ...	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „ ...	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables, and flowers will be half parcel-rates as shown above.

Act II. of 1881.

ACT II. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 1ST JANUARY 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the Protection of the said Canal and the Execution of Works necessary for its Maintenance.

Preamble.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels, and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection, and maintenance of the said canal; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881;"

Commencement.

and it shall come into force at once.

Interpretation clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang canal, and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained, or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures, and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates, and other erections, trees, crops, plantations, or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber, and other floating bodies:

"Canal Officer."

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Superintending Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

Power to appoint officers.

3. The Chief Commissioner may, from time to time, declare, by notification in the *British Burma Gazette*, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

Tolls to be levied from vessels using the canal.

4. Such tolls as the Chief Commissioner may, from time to time, by notification in the *British Burma Gazette*, direct shall be levied from all vessels entering or navigating the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section 3 in that behalf.

Power to detain vessels violating rules.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to detain vessel on failure to pay tolls or charges.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

8. Within a reasonable time after any seizure under section 6 or section 7, the Canal Officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

Power to sell property seized under section 6 or 7.

and, if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Procedure in respect of vessels abandoned and goods unclaimed.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may, from time to time, by rule direct that, if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo, or goods, is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Power to sell.

Act II. of 1881.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo, or goods, and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold, and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land, and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or especially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal, and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks, and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing-crop, fence, or jungle.

Power to clear land.

Power to enter, to repair, and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section 10, 11, or 12, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land, compensation for any damage which may be occasioned by such entry, and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage, such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon— Act II. of 1881.

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the canal, and take possession of, appropriate, and remove, any trees or bamboos, whether standing or not, and any timber, mats, ropes, or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively, and liable to be required under section 14 to assist as aforesaid, and may, from time to time, add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section 14, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section 24, of any trees, bamboos, or other materials, any damage, over and above the price payable for such materials, results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority, and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters, or obstructs the canal;

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(*b*) interferes with, increases, or diminishes the supply of water in, or the flow of water from, through, over, or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal, or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal, contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating, or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section 14, refuses or neglects, without reasonable cause, so to labour;

(*h*) destroys or moves any land-mark, level-mark, or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks, or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal, or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Saving of prosecution under other laws.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Recovery of fines for offences in navigating canal.

19. Any fine imposed under this Act upon the owner of any vessel or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, 1882,* or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Power to arrest without warrant.

20. Any person duly authorized in this behalf under section 3 may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest police station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*), and (*c*) of section 18.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor-General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

* See Act X. of 1882, s. 3, and ss. 386-389.

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter; Act V. of 1881.

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section 18.

Publication of rules. Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past Proceedings.

22. [*Repealed by Act XII. of 1891, Sch. I.*]

ACT. V. OF 1881.*

PROBATE AND ADMINISTRATION ACT.

RECEIVED THE G. G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to provide for the Grant of Probates of Wills and Letters of Administration to the Estates of certain deceased persons.

Preamble. WHEREAS it is expedient to provide for the grant of probate of wills and letters of adminstration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Probate and Administration Act, 1881:"

Local extent. It applies to the whole of British India;

Commencement. and it shall come into force on the first day of April 1881.

Personal application. **2.** Chapters II. to XIII., both inclusive, of this Act, shall apply in the case of every Hindu, Muhammadan, Buddhist, and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on, or after, the said first day of April 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindu Wills Act, 1870, applies,† no Court in any local area beyond the limits of the town of Calcutta,

* Act V. of 1881 has been declared, under the Scheduled Districts Act (XIV. of, 1874), to be in force in the following scheduled districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

† The Hindu Wills Act, 1870, applies, in the cases of Hindus, Jainas, Sikhs, and Buddhists, in the territories subject to the Lieutenant-Governor of Bengal, and in the towns of Madras and Bombay.

Act V. of 1881.

Madras, and Bombay, and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorized it so to do:*

Interpretation-clause.

3.† In this Act, unless there be something repugnant in the subject or context,—

"province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

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* The following Courts have been authorized to receive applications for probate or letters of administration within the areas mentioned; namely:—

In Bengal: the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal, and all District Judges, as defined in the Act, within the said territories, and such judicial officers as the High Court may, from time to time, appoint as District Delegates.—See *Calcutta Gazette*, April 20, 1881, Pt. I., p. 445.

In the Panjab: the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Panjab, and all District Judges, as defined in the Act, within the said territories, and such judicial officers as the Chief Court may, from time to time, appoint as District Delegates.—See *Panjab Gazette*, Oct. 6, 1881, Pt. I., p. 483.

In the Andaman and Nicobar Islands: the Courts of the Deputy Superintendent and the Chief Commissioner.—See *Gazette of India*, May 28, 1881, Pt. I., p. 214.

In Assam: the High Court at Calcutta, throughout Assam, and all District Judges as defined in the Act, within the province, and such judicial officers as the High Court may, from time to time, appoint as District Delegates.—See *Assam Gazette*, Aug. 27, 1881, Pt. I., p. 337.

† Compare Act X. of 1865, s. 3.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.*

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions, or in a foreign country, and a properly-authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Appointment, express or implied.

Illustrations.

(*a.*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b.*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but, should the within named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c.*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Persons to whom probate cannot be granted.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

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* Compare Act X. of 1865, Pt. XXIX.

Act V. of 1881. *Procedure when different executors appointed by codicil.*

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor, who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

a universal or a residuary legatee may be admitted to prove the will, and letters of administration, with the will annexed, may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration, with the will annexed, shall not be granted to any legatee, other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.*

(*a.*)—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

* Compare Act X. of 1865, Part XXX. (*a*) to (*f*).

Act V. of 1881.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b.)—Grants for the Use and Benefit of Others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person, to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule* for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint

* *Sic.* Read "rules."

an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.)—For Special Purposes.

Probate limited to purpose specified in will.

35. If any executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose; and, if he should appoint an agent to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator, to whom the same has or have been granted, is absent from the province within which the Court, that has granted the probate or letters of administration, is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Act V. of 1881.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d.)—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e.)—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.)—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.*

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII. of this Act, or has exhibited under that chapter an inventory or account which is untrue in a material respect.†

Illustrations.

(*a*.) The Court by which the grant was made had no jurisdiction.

(*b*.) The grant was made without citing parties who ought to have been cited.

(*c*.) The will of which probate was obtained was forged or revoked.

(*d*.) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.

(*e*.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*.) Since probate was granted, a later will has been discovered.

(*g*.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*.) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

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* Compare Act X. of 1865, Pt. XXX. (*g*) and (*h*).

† Cl. 5 has been added by Act VI. of 1889, s. 11.

Act V. of 1881.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.*

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and, if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.†

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person ap-

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* Compare Act X. of 1865, Pt. XXXI., as amended by Acts XXIII. of 1875 and VI. of 1881.

† See Act XIV. of 1882, s. 3.

plying for the same that the testator or intestate, as the case may be, had, at the time of his decease, a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge. Act V of 1881.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may, in his discretion, refuse the application, if, in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the province in which the same is or are* granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants a certificate to the following effect:—

"I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that, on the day of 18 , the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of , deceased, to *E. F.*, of , and *G. H.*, of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;"

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or

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* The words "or are" have been inserted by Act XII. of 1891.

Act V of 1881.

intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or in the cases mentioned in sections 24, 25, and 26, a copy, draft, or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

Verification of translation by person other than Court translator.

63. In cases wherein the will, copy, or draft, is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy, or draft, be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate. Act V of 1881.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

Additional statements in petition for probate, &c.

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

Petition for probate or administration to be signed and verified.

"I (*A. B.*) the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

Verification of petition for probate by one witness to will.

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.*

Punishment for false averment in petition or declaration.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

District Judge may examine petitioner in person,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

* See Act XLV. of 1860, Ch. XI.

Act V. of 1881.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect :—

"Let nothing be done in the matter of the estate of *A. B.*, late of deceased, who died on the day of at , without notice to *C, D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made in order that the same may be

presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge. Act V. of 1881.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, 'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint.'*

"The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*), hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, 'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint.'*

"The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, get-

* The words in single quotation have been substituted for the original by Act VI. of 1889, ss. 12 and 13.

Act V. of 1881.

ting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator* or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceedings† shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,‡ in which the petitioner for a probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

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* *Sic.* Read "testator's".

† The word "proceedings" has been substituted for the word "proceeding."—See Act XII. of 1891.

‡ See Act XIV. of 1882, s. 3.

Act V. of 1881.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure* applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.†

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90.‡ (*1*) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(*2*) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him, and the Court

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* See Act XIV. of 1882, s. 3.

† Compare Act X. of 1865, Pt. XXXIII.

‡ S. 90 has been substituted for the original by Act VI. of 1889, s. 14. "Notwithstanding anything in s. 90 of the Probate and Administration Act, 1881, a disposal of property by an executor or administrator who was appointed before the commencement of this Act, and to whom the provisions of that section were applicable, shall not be void by reason only that the consent of the Court to the disposal of the property was not obtained."—Act VI. of 1889, s. 19.

Act V. of 1881.

which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge, or transfer by sale, gift, exchange, or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act, there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2), and (4), or of sub-sections (1), (3), and (4) as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immoveable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Act V. of 1881.

Survival of powers on death of one of several executors or administrators.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.*

As to deceased's funeral ceremonies.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

98.† (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the grant, or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

(*2*) The High Court may from time to time prescribe the form in which an inventory or account under this section, is to be exhibited.

(*3*) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

Inventory to include property in any part of British India.

99. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:‡

* Compare Act X. of 1865, Pt. XXXIV., as amended by Act XIII. of 1875.

† S. 98 has been substituted for the original by Act VI. of 1889, s. 15.

‡ As amended by Act VI. of 1889, s. 16.

Act V, of 1881.

And the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

As to property of, and debts owing to, deceased.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and deathbed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceeding that may be necessary for administering the estate, are to be paid next after the funeral expenses and deathbed charges.

Wages for certain services to be next paid, and then other debts.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

107. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Executor not to pay one legatee in preference to another.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum Rupees 333-5-4 are to be paid to B, and Rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.*

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a.*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no other authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b.*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a.*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

* Compare Act X. of 1865, Pt. XXXV.

(*b.*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c.*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d.*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e.*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a.*) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b.*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a.*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b.*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.*

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.†

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given, and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased; or

Procedure when no fund charged with, or appropriated to, annuity.

If no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

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* Compare Act X. of 1865, Pt. XXXVI.

† Compare Act X. of 1865, Pt. XXXVII., as amended by Act VI. of 1881.

Act V. of 1881.

Transfer to residuary legatee of contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money, and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.*

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

* Compare Act X. of 1865, Pt. XXXVIII.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a.*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b.*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c.*) The testator bequeaths all his four per cent. Government promissory notes to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a.*) The testator bequeaths the residue of his property to a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b.*) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Act V. of 1881.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.*

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within further time allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee, to refund in proportion.

* Compare Act X. of 1865, Pt. XXXIX.

Distribution of assets.

139.* Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Creditor may call upon legatee to refund.

140.* A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

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* For limitation of suits under ss. 139 and 140, see Act XV. of 1877, Sch. II., No. 43, Vol. II., p. 203.

Act V. of 1881.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

145A.* Where a person not having his domicile in British India has died, leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India, who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.†

Liability of executor or administrator for devastation.

146. When an executor or administrator misapplies the estate of the deceased or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits,‡ and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII., IX., X., and XII. of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

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* S. 145A has been inserted by Act II. of 1890.
† Compare Act X. of 1865, Pt. XL.
‡ See Act XV. of 1877.

Saving clause.

149. Nothing herein contained shall— Act V. of 1881.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay.*

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. [*Repealed by Act VII. of 1889, s. 2 and sch.*]

Grant of probate or administration to supersede certificate under Act XXVII. of 1860, or Bombay Regulation VIII. of 1827.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under† Act No. XXVII. of 1860, or Bombay Regulation No. VIII. of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Repealed by Act VII. of 1889, s. 2 and sch.*]

Amendment of Hindu Wills Act.

154. The following amendments shall be made in the Hindu Wills Act, 1870 (namely):—

(*a.*) For the portion of section 2 commencing with the words "sections 179" and ending with the words "administrator with the will annexed," the words "and section 187" shall be substituted.

(*b.*) The third clause of section 3 and the last clause of section 6 shall be repealed.

(*c.*) In section 6, for the words "103 and 182" the words "and 103" shall be substituted.

Validation of grants of probate and administration made in British Burma.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan, or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before

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* See Act II. of 1874.

† Here the words "the said," being repealed by Act XII. of 1891, have been omitted.

Act VI. of 1881.

this Act comes into force, have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Amendment of Act XV. of 1877.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Surrender of revoked probate or letters of administration.

157.* (*1*) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(*2*) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

ACT VI. OF 1881.

THE DISTRICT DELEGATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

Preamble.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The District Delegates Act, 1881:"

Extent.

It extends to the whole of British India;†

Commencement.

and it shall come into force on the first day of April, 1881.

Addition of section after section 235 of Succession Act.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"235A, The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called District Delegates."

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* S. 157 has been added by Act VI. of 1889, s. 17.

† Act VI. of 1881 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled Districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán, in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Addition of section after section 241 of same Act.

3. After section 241 of the said Act, the following section shall be added :—

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Probate and letters of administration may be granted by Delegate.

Addition to sections 244 and 246 of same Act.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted :—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge, and immediately on a caveat being entered with the District Judge; a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or ndministration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Amendment of section 253 of same Act.

Addition of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added :—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to transmit statement to District Judge in doubtful cases where no contention.

Act VII. of 1881.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)]"; and in section 308, after the words "District Judge, by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255, and 308 of same Act.

9. In the said Act, sections 246, 250, 255, and 259, after the words "District Judge," and in section 250 and section 254 (*when it first occurs*), after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "*or District Delegate*" *in certain sections of same Act.*

ACT VII. OF 1881.*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to amend Bengal Act No. IX. of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX. of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section 64, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force.

Amendment of Bengal Act No. IX. of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53 has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

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* Act VII. of 1881 has, under s. 3 of the Scheduled Districts Act (XIV. of 1874), been declared in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum.—See Notification No. 1395, dated Oct. 21, 1881, published in *Calcutta Gazette*, Nov. 2, 1881, Pt. I. A., p. 192, and *Gazette of India*, Oct. 22, 1881, Pt. I., p. 507.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land and no longer."

Owner, holder, or occupier of rent-free lands may be sued.

Decree against occupier tantamount to decree against owner.

Act IX. of 1881.

ACT IX. OF 1881.*

RECEIVED THE G.-G.'S ASSENT ON THE 25TH FEBRUARY 1881.

An Act to amend the Administrator-General's Act, 1874.

WHEREAS Hindús, Muhammadans, and Buddhists, are exempted from the operation of certain provisions of the Administrator-General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans, and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Preamble.

Short title.

Commencement.

1. This Act may be called "The Administrator-General's Act, 1881:"
and shall come into force at once.

Amendment of sections 16, 17, 18, and 64 of Act No. II. of 1874.

2. In sections 16, 17, 18, and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section 23 of the same Act, the following section shall be inserted.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras, or Bombay to the Administrator-General of the Presidency of Bengal, Madras, or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts, and all persons delivering up such property, to such Administrator-General: Provided that the High Court may direct, by its grant, that

Effect of probate or letters granted to Administrator-General.

* Act IX. of 1881 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chutia Nagpur Division: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Act IX. of 1881. such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator-General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section 28 of the same Act, the following section shall be substituted :—

Distribution of assets.

"28. When the Administrator-General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. [*Repealed by Act XII. of 1891, Sch. I.*]

Amendment of section 38 of same.

6. In section 38 of the same Act, for the words "such certificate" the words "certificate under section 36 or 37," shall be substituted.*

New section inserted after section 55 of same.

7. After section 55 of the same Act, the following section shall be inserted :—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator-General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator-General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section 61 of the same Act, the following section shall be inserted :—

Power to examine on oath.

"60A. The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of facts, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who in willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration, or certificate granted or vested under the said Act before the passing of this Act.

* In s. 6, certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

ACT X. OF 1881.

THE CORONERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH FEBRUARY 1881.

An Act to amend the Coroners Act, 1871, and for other purposes.

Preamble.

WHEREAS it is expedient to amend the Coroners Act, 1871, in manner hereinafter appearing; It is hereby enacted as follows:*—

Short title. Commencement.

1. This Act may be called "The Coroners Act, 1881," and shall come into force on the passing thereof.

2—4. [*Repealed by Act V. of 1889.*]

5. In section 8 of the Coroners Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Act IV. of 1871, section 8, amended.

Section 17 of same Act amended.

6. For the first two clauses of section 17 of the Coroners Act, 1871, the following shall be substituted, that is to say:—

[See *Vol. I., p. 891.*]

7. To section 20 of the Coroners Act, 1871, the following clause shall be added, that is to say: "For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."†

Addition to section 20 of same Act

ACT XI. OF 1881.

THE MUNICIPAL TAXATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH FEBRUARY 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor-General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State of India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent. Commencement.

It extends to the whole of Brtish India: and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

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* This preamble has been substituted by Act V. of 1889.

† Ss. 8 & 9 (which are omitted) have been repealed by Act X. of 1882.

Act XI, of 1881.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor-General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time, determine to be fair and reasonable.

Decision of questions, arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor-General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor-General in Council may, from time to time, appoint in this behalf, shall be conclusive.

ACT XII. OF 1881.

Act XII. of 1881.

THE N.-W. P. RENT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH MARCH 1881.

An Act to amend the law relating to the recovery of Rent in the North-Western Provinces.

Preamble.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

Local extent.

It extends in the first instance to the territories for the time being under the Government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873,* has been extended to any such territory; such part shall be repealed therein, and the corresponding part of this Act shall extend thereto.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the time being occupied by dwelling-houses or manufactories or appurtenant thereto, so long as such land is not let to agricultural tenants.

Commencement.

This Act shall come into force on the first day of April 1881.

Act No. XVIII. of 1873 repealed.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c., under repealed Act.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred, and places appointed, under that Act, shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred, and appointed hereunder.

Acts amended.

Illustration (*a*) to the Indian Penal Code, section 19,† shall be read as if, for "Act X. of 1859,"‡ the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

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* Act XVIII. of 1873 has been repealed by s. 2 of this Act.

† Here certain words, being repealed, have been omitted.—See Act IX. of 1887, s. 2.

‡ Act X. of 1859 has been repealed in the N.-W. P. by Act XVIII. of 1873.

Act XII. of 1881.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context—

'Mahál.'

(1.) 'Mahal' means—

(*a*) any local area held under a separate engagement for the payment of land revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:'

(1A) 'Tenant' includes a thekadar and a katkanadar:—

'Rent;'

(2) 'Rent' means whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land.

'Landholder:'

(3) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sir-land;'

(4) 'Sir-land' means—

(*a*) land recorded as sir at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since:

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock, or by his servants, or by hired labour:

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:'

(5) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:'

(6) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:'

(7) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:'

(8) 'Civil Jail' means the civil jail of the district, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent settlement

4. When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

5. When any land in a district, or portion of a district, which is permanently settled has been held by a tenant and his predecessors in interest from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

Tenants at fixed rates.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has, for a period of twenty years next before the institution of the suit, been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Presumption when 20 years' holding at fixed rate is proved.

7. Every person who may hereafter lose, or part with, his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Ex-proprietary tenants.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land, and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application, or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Occupancy-tenants.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy.

Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages:

Time excluded from reckoning period necessary for acquiring right of occupancy.

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him, or any one claiming under him, shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sub-lets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Act XII. of 1881.

Rights under sections 7 and 8 when transferable.

9. The right of tenants at fixed rates may devolve by succession, or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose, or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates.

11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants.

12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement, except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871,* or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order.

13. (*a*) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, or by an order under this Act;

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where, by order of the Local Government, the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds, and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

* The Indian Registration Act (VIII.) of 1871 has been repealed by Act III. of 1877.

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency, or at the expense, of the tenant; Act XII. of 1881.

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

14. (*a*) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*), and (*e*), has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison.

(*b*) Whenever the district or tahsíl or other local area in which such land is situated has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*), and (*e*), has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*), and (*e*), whichever first occurs.

Act XII. of 1881.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

17. Notwithstanding anything contained in section 16, where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others :—

(*a*) that the area of the tenant's holding has been increased by alluvion or otherwise :

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency, or at the expense, of the tenant :

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others :—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise ;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

Grounds of enhancement or abatement of rent of tenant at fixed rates.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion, or otherwise ;

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

Day before which applications for enhancement or abatement must be made.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated ;

Orders when to take effect.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Consideration of caste and class of tenant in determining rate of his rent.

20. In determining, under this chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom caste is taken into account in determining such rate ;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

Tenants-at-will.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Applications to survey land.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shown, may, by an order in writing, direct the survey to be made by such person, and at such time, as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey, and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

23. Whenever, for any cause, the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation, or otherwise, as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted or suspended for the period of such suspension or payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

and, subject to the same rules, the landholder shall be bound by such order.

(A.)—Leases.

Contents of lease to which every tenant is entitled.

24. Every tenant is entitled to receive from the landholder, and may, at any time during the continuance of his holding, apply for a lease containing the following particulars:—

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

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(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner, and place of delivery.

Leases to which tenants at fixed rates are entitled.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which ex-proprietary and occupancy-tenants are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which other tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Landholder granting lease entitled to reciprocal engagement.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

Lease for period exceeding term of landholder's engagement.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is, on the expiration of such term, reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

Resumption of rent-free grants.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December 1790, by any authority other than that of the Governor-General in Council, were declared by Bengal Regulation XIX. of 1793, section 10, to be null and void, and like provisions have been, by divers Regulations, applied to the several parts of the territories to which this Act extends, and the said Regulation XIX. of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Applications to resume.

(*b*) Applications by the proprietor to resume such grants, or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against the representatives after his death) during his continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been, for fifty years next before the twenty-second day of December 1873, held rent-free, and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873,* held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration, and resumption thereof had been barred under Act No. X. of 1859,† section 28, or under the Indian Limitation Act, 1871,‡ Schedule II., No. 130.

(*B.*)—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless, on or before the first day of May in any year, he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly, or unless it is let to any other person by such landholder or agent:

Relinquishment of land by tenant not holding under a lease.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed, and the tenant, within fifteen days of the date of such order, gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsildár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsildár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but, if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of

Mode of serving notice.

* Act XVIII. of 1873 has been repealed by s. 2 of this Act.

† Act X. of 1859 has been repealed in the N.-W. P. by Act XVIII. of 1873.

‡ Act IX. of 1871 has been repealed by Act XV. of 1877.

Act XII. of 1881. residence, or, if he does not reside in the district wherein the land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

33A. When any such notice has been received by, or served on, a landholder or his agent, he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

Application by landholder to set aside notice.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

34. (*a*) When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of *June*, to be ejected from the land in respect of which the arrear is due.

Liability of tenant to pay interest on arrear and to be ejected.

(*b*) No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Bar to ejectment without decree.

(*c*) No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

Ejectment not to be decreed for certain acts or omissions.

(1) which is not detrimental to the land inhis occupation, or inconsistent with the purpose for which the land was let, or

(2) which, by law, custom, or special agreement, does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékádár and a katkanadár.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant, or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed, and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that, if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Service of notice on tenant for limited period.

Language and contents of notice,

37. The notice of ejectment shall be written in the vernacular language and character of the district: Act XII. of 1881.

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsildár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service; it shall be served personally on the tenant, if practicable; but, if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment,

39. (*a*) The tenant on whom such notice has been served may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*) When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*) On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that, when such question has been determined, or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until, and cease upon, that day:

Provided also that the tenancy shall not cease under this section when, after the service of the notice, the landholder authorizes the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 29, clause (*a*); or

(*d*) that, if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the leaseholder, and the proprietor's right of reentry at the end of the term is contingent on the repayment of such advance,

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either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorize the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*) Any tenant ejected in accordance with the provisions of this Act shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*) Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*) In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*) The rent, if any, payable to the landholder by the tenant at the time of his ejectment, may be set off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

43. (*a*) Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting, that a proper officer be deputed to make the division, estimate, or appraisement.

Procedure on such application.

(*b*) On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

(*c*) If, on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors, one by each of the parties, and one by the officer deputed to divide the grain, or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*) Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf. Act XII. of 1881.

(*e*) The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*C.*)—*Compensation for Improvements made by Tenants.*

Tenant's right to compensation for improvements.

44. If any tenant or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár, and the word "improvements" means works by which the annual letting-value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(*a*) tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes,

(*b*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water,

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1st, by payment in money;

2nd, by a rent to be charged on the land;

3rd, by the grant of a beneficial lease of the land, by the landholder or his representative to the tenant or his representative;

4th, partly by one or by any two of the said ways, and partly by the others or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector, stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

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(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Consideration in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material, or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(D.)—Compensation for Wrongful Acts and Omissions.

Right of tenant to compensation for exactions in excess of rent, or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid.

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(E.)—Deposit of Rent in Court.

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be, as nearly as may be, in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true. Act XII. of 1881.

Penalty for false statement.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited a notice in English or vernacular language of the district, in the form (B) in the first schedule hereto annexed, or to the like effect.

Notice to issue on deposit being made.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

53. Such notice shall be served through the tahsildár upon the person to whom it is addressed, or upon his recognized agent:

Mode of serving notice.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

54. If, at any time before the expiration of three years from the date of the deposit, the person on whom such notice is served, or his recognized agent, appears, and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid, or paid in accordance with the provisions next hereinafter contained.

Payment to person served with notice on his application.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

Refund to depositor.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Deposit in Court of rent claimed by two or more persons.

The Collector of the District or Assistant Collector may, after such inquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any

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CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter:

Distress of produce barred by security given for rent.

57. *Provided*—

(*a*) that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained;

Sharer when entitled to distrain.

(*b*) that no sharer in any mahal shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator?

Distress by manager.

(*c*) that no sharer in a joint undivided mahal shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahal on behalf of all the sharers therein;

Distress in pattidári mahals.

(*d*) that in pattidári mahals distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the patídár who is entitled to collect the rent.

No distress for over-due arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year;

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess, and such agreement has been attested before the kánungo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid in the collection of rent, if expressly authorized by power-of-attorney in that behalf.

If any wrongful act is committed by any such agent under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Liability for illegal act.

60. When any person, empowered to distrain property under section 56, section 57, or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Written authority to servants employed to distrain.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor, or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

Standing crops, and crops gathered, liable to distress.

But no such crops or products other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Exception.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Defaulter to be served with written demand and account.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Mode of service.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Distress to be proportionate to arrear.

List of property to be prepared, and copy served on owner.

64. (*a*) Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

Standing crops, &c., when distrained, may be reaped and stored.

(*b*) If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(*c*) In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

(*d*) Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided;

Sale of products which cannot be stored.

Act XII. of 1881. but in such case the distress shall be made at least twenty days before the time when the crops or products, or any part of the same, are fit for reaping or gathering.

Assistance to distrainer opposed or apprehending resistance.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

67. Within five days from the time of the storing of any distrained crops or products,

or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsil in which they are situate.

Contents of application.

68. The application shall be in writing, and shall contain—

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter, and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

Fee for service of notice.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

Procedure on receipt of application.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall, at the same time, send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

Suspension of sale on receipt of Collector's certificate of institution of suit.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

Suit to contest distrainer's demand before issue of notice of sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings pending the decision of the case.

Distress when to be withdrawn.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

When sale may be proceeded with.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

Place of sale.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Manner of sale.

The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable;

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and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

If fair price be not offered, sale may be postponed, and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 96, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

78. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act:

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale, and report the case to the Collector of the District or Assistant Collector, who

Postponement of sale, and report to Collector when owner has not received due notice.

shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale officer attends, and no sale takes place.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter;

or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

Act XII. of 1881.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (*a*) If any person claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Decree for release and compensation when claim upheld.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by, or on behalf of, any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistan Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Saving of right to sue in Civil Court.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the

Persons prevented from suing in time to save property from sale may sue for damages.

property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale. Act XII of 1881.

Wrongful acts of distrainer.

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn, when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

Suit by owner against person distraining or selling without authority.

87. If any person not empowered to distrain property under section 56, 57, or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

and the defendant shall be held to have committed criminal trespass.

Penalty in addition to damages.

and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit:

Limitation of suits under sections 85, 86, 87.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Procedure in case of resistance of distress.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give security for his person, and, in default of such security, may commit him to the civil jail until the case is tried;

and, if the offence be proved, and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is, previously to the expiration of such term, paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

Act XII. of 1881.

(c) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

Proceedings of officers subject to revision and orders of Collector.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a sub-division of the district.

CHAPTER IV.

PROCESS.

Mode of serving process.

91. (a) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Nazir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Deposit before issue.

(b) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Power to direct service gratis.

(c) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Punishment for resisting process.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Power to issue summons and warrant.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge, and, if, after due service of the summons, he fails to attend, may issue a warrant for his arrest.

CHAPTER V.

JURISDICTION OF COURTS.

Suits cognizable by Revenue Courts only.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suit shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise;

(a) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let; Act XII. of 1881.

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom, or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for or to prohibit any act, omission, or breach, mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government revenue and village-expenses, or for a settlement of accounts;

(*i*) suits, by muáfídárs or assignees of the Government revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

Limitation of suits under this Act.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or "for village-expenses"* or other dues, shall not be brought after three years from the day on which the "arrears, share, expenses, or dues,"* became due.

Suits relating to distress, not being suits to contest the demand, or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued.

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due, or the day on which the right to sue accrues (as the case may be), shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers, and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the Board may, from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

Applications cognizable by Revenue Courts only.

95. No Courts other than Courts of Revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made; and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

* In s. 94 the words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

Act XII. of 1881.

(*a*) Application to determine the nature and class of a tenant's tenure under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwarí to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Application made by a tenant, under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop or ungathered products of the earth belonging to the tenant, and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application under section 33A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55A.

"For the purposes of the Court-fees Act, 1870, the amount of fee payable in the cases next hereinafter mentioned shall be computed as follows:—

"(*i*) in applications under clause (*c*), and in appeals from orders passed on applications under that clause as in a suit for possession of the land to which the application or appeal relates;

"(*ii*) in applications under clauses (*l*), (*n*), (*o*), and (*p*), and in appeals from orders passed on applications under clauses (*d*), (*e*), (*f*), (*l*), (*n*), (*o*), (*p*), (*q*), and (*s*), according to the rent of the land to which the application or appeal relates payable for the year next before the date of presenting the application, or if in any case the fee cannot be so computed, then according to the annual letting value of the land as estimated by the applicant or appellant, as the case may be;

"(*iii*) in applications under clause (*m*), and in appeals from orders passed on applications under clauses (*j*), (*m*), and (*t*), according to the amount claimed in the application or in the petition of appeal, as the case may be."* Act XII. of 1881.

Limitation of process of execution on applications.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Points of procedure relating to applications under section 95.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops, or products referred to, is or are situate.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and, when proved, shall have the same effect, as if they were judgments of the Civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance, and the like, as may be lawfully exercised by the Civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

Reference to arbitration.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Power to invest officers with Assistant Collector's powers, and withdraw them.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Suits and applications cognizable by Assistant Collectors.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions :—

(*a*) suits for arrears of rent or the money-equivalent of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries, or the like ;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48 ;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer ;

(*d*) suits by lambardárs for arrears of Government revenue, payable through them by the co sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár ;

* In s. 95 the paragraph quoted has been substituted for the original paragraph by Act XIV. of 1886, s. 2.

Act XII. of 1881.

(*e*) suits by muáfídárs or assignees of the Government revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue;

(*m*) applications under section 22A to survey land.

Additional suits and applications triable by Assistant Collectors, first class.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for or to prohibit any act, omission, or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government revenue and village-expenses or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served,

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33A to have a notice of relinquishment declared invalid; Act XII. of 1881.

(*n*) applications to take out of deposit amounts deposited under section 55A.

Additional applications triable by Assistant Collector, first class, with special powers.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:—

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

Power of Board to transfer business.

100A.* The Board may, on cause shown to its satisfaction, transfer any suit, application, or appeal, or class of suits, applications, or appeals, from any Court of Revenue to any other Court of Revenue competent as regards the nature of the case or class of cases to deal therewith under the provisions of this Act.

Commissioners may transfer appeals.

100B.* (1) The Commissioner of a Division may, with the sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector of a District within his Division.

(2) The order passed by a Collector on an appeal transferred to him by the Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner, and no otherwise.

(3) The Local Government may by order recall any appeal transferred to a Collector under sub-section (1), and refer it for disposal to the Commissioner of the Division by whom it was transferred.

Power to make over cases.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district may make over any case or class of cases for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to withdraw cases.

102. Collectors of Districts and Assistant Collectors in charge of sub-divisions of districts may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Powers exercisable by Collector of District.

103. The Collector of the District may exercise—

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

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* Ss. 100A and 100B have been inserted by Act XIV. of 1886, s. 3.

Act XII. of 1881.

Investment of officer in charge of sub-division with powers of Collector of District.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Mode of conferring powers.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

Place of instituting suits.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Plaint.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

(*a*) the name, description, and place of abode of the plaintiff;

(*b*) the name, description, and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim and its amount or value computed according to Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

Managers of mahâls to be, for purposes of litigation, deemed landholders.

105. For the purpose of suing or being sued under this Act, the managers of mahâls, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Suits by co-sharers in undivided property.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Plaint by whom presented.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Verification of plaint.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

False averment.

If the plaint contains an averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Document relied on by plaintiff to be presented with plaint.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues, under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division, in which the land is situate;

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land and (where fields have been numbered in a Government survey) the number of each field and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and, in all cases coming under this section, the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation, and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Act XII. of 1881.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or misjoinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant;

Issue of summons.

and, if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court, of its own accord, require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the smmons shall be fixed with reference to the state of the file and the distance that the defendant may be, or be supposed to be, at the time from the place where the Court is held;

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

Order to bring witnesses. It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process.

Form of summons. And it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Copy or statement annexed to summons. It shall be accompanied with one of the copies or concise statements mentioned in section 112D.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing a copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

Endorsement on summons.

116. If the summons be served by delivering a copy to the defendant personally, the Nazir shall endorse on the summons the fact of such service.

If personal service be not effected, the Nazir shall endorse on the summons the reasons of not serving it personally, and how it has been served.

Service of summons in another district.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service when defendant resides out of British India, and has no agent to accept service.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service through British Resident or Agent of Government.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and, if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons,

or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

Effect of failure to deposit.

If the said amount be not so deposited (except where the Court, in exercise of the discretion reserved to it in section 91, allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

Procedure when plaintiff desires issue of warrant of arrest.

119. (*a*) If, in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

Act XII of 1881.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and, if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D, and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

Procedure after arrest of defendant.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure when defendant is brought before Court under warrant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided;

and, if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security, or deposits such sum, as the Court orders.

Form of security-bond.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Procedure when defendant cannot be arrested under warrant.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

Compensation for arrest applied for without reasonable cause.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum, not exceeding one hundred rupees, as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Consequence of neither party appearing on day fixed.

124. If, on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided,

neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits. Act XII. of 1881.

125. If, on any such day, only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff and any documentary or other evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit, and alter or rescind the judgment according to the justice of the case.

but Court may revive suit, and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-

Examination and cross-examination of agent.

Act XII. of 1881.

examined in like manner as the party himself would have been if he had attended personally.

Defendant may file written statement.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and, if it contains any averment, which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement
False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the Civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

Witness produced may be examined.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Document relied on by defendant to be produced at first hearing.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit;

and, unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

Decree after examination if no further evidence is required.

135. If, after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Party to attend in person when his agent is unable to answer.

136. If, on such examination as aforesaid, either party is absent, and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

and, if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

Procedure when parties at issue on question requiring evidence.

137. If, on such examination as aforesaid, it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

Parties to produce witnesses or procure attendance by summons.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Court shall thereupon issue a summons requiring such witness to attend.

Provisions regarding attendance, examination, &c., of witnesses.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Case to be struck off if neither party appears.

140. If, on the day fixed for the trial of any issue, neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Trial of issue *ex parte*.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on such agents.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person;

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

Personal attendance of female plaintiff or defendant when not required.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Parties may employ agents.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf;

Personal attendance when not excused.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Fee for agents not chargeable as costs.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Court may grant time or adjourn hearing.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Act XII. of 1881.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

Court may cause local enquiry and report, or may itself enquire.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot, and make such local enquiry in person.

Provisions applied to such enquiry.

The provisions of the law for the time being in force relative to local enquiries by Amins or Commissioners, under orders of the Civil Courts, shall apply to any local enquiry made by any officer under this section,

and, so far as they are applicable, to enquiries made by the presiding officer of the Court in person.

Record in case of enquiry by Court.

In the latter case the presiding officer, after completing the enquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Defendant may pay admitted debt and costs into Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

If the defendant deposit less than the sum claimed, and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

No interest to plaintiff after date of deposit by defendant.

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the Court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

In suits where right to receive rent is disputed, third person who has received it may be made a party.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Saving of right to sue in Civil Court to prove title to rent.

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit, Act XII. of 1881.

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

Delivery of judgment.

150. Every judgment under this chapter shall be pronounced in open Court.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced :

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit ; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power ; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set-off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum on any sum decreed or found to be due or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place* within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

Procedure in Execution of Decrees in Suits.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

* As to the places where the Board of Revenue may sit, see Act XX. of 1890, s. 63.

Act XII. of 1881.

Magistrate to give it effect in case of opposition.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Power to order detention in, or commitment to, civil jail in certain cases.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security bond given under section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

Process against surety on failure to deliver judgment-debtor in to custody.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process of execution against person or property, but not both.

156. (*a*) A writ of execution may be issued against either the person or the property of a judgment-debtor;

but process shall not be issued simultaneously against both person and property.

Applications on which it may issue.

(*b*) Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or thereafter, upon the written application of the judgment-creditor or his agent.

Form of writ of execution.

(*c*) Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Execution against moveable property.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process by the creditor or his agent:

Articles exempted from attachment.

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife, or children, shall be attached under this section.

Date and duration of writs.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Act XII. of 1881.

Second and successive writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one year execution not to issue without notice to party concerned.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

Execution not to issue against heir or representative of deceased party without notice.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

Regulation of period in such case.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Court.

Procedure in execution of writ against person.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed six weeks when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months in any other case.*

No person to be imprisoned a second time under same judgment.

164. (*a*) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

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* This proviso has been substituted for the original by Act VI. of 1888, s. 10 (*a*).

Act XII. of 1881.

(*b*) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days, at such rate, not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive) and section 80 shall, so far as they can be made applicable, apply to the sale of the property as if the terms 'distress,' 'distrained property,' and 'distrainer,' included respectively the execution of a writ against moveable property, moveable property taken in execution of a writ, and a judgment-creditor.*

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

* This paragraph has been substituted by Act XIV. of 1886, s. 4.

But any person injured by such irregularity may recover compensation for such injury by suit in the Civil Court:

Right to sue for compensation.

Limitation.

Provided that such suit be brought within one year from the date of sale.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money, when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahal, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169, and 170, shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the District in which such property is situate.

Possession to be given to auction-purchaser.

173 When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount:

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the proper-

Power to transfer property to judgment-creditor.

Act XII. of 1881.

ty to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period, not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the Civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If, in the opinion of the Collector of the District, the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses;

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector

Compensation awardable against claimant failing to establish right.

or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property. Act XII. of 1881.

No appeal from order under section 179 or 180.

181. (*a*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

Right to sue in Civil Court.

(*b*) But the party against whom the same is passed may institute a suit in the Civil Court to establish his right at any time within one year from the date of the order;

Proviso.

(*c*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable, the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

CHAPTER VIII.

APPEAL, RE-HEARING, AND REVIEW.

(*A.*)—*From Decrees in Suits.*

Judgment of Collector of District or Assistant Collector of first class when final.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Appeal from decision of Assistant Collector of second class.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be applicable to the Collector of the District whose order thereon shall be final.

Time for presentation.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Procedure on appeal.

185. The Collector of the District may either dismiss the petition, or may fix a day for hearing the appeal; and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears, and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

Re-admission of appeal.

186. If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal;

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

Act XII. of 1881.

Judgment in appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Re-hearing of suits not open to appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Appeal to District Judge.

189. Notwithstanding anything contained in sections 182 and 183, an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class in all suits mentioned in section 93,

in which the amount or value of the subject-matter exceeds one hundred rupees, or

"in which the rent payable by the tenant has been a matter in issue, and has been determined, or"*

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

Rules as to time of presentation, &c., to apply.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of Civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Special appeal to High Court from District Judge.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure† and the Indian Limitation Act, 1877.

(B.)—From orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second-class.

Appeal from Assistant Collector of second class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

(2) Assistant Collectors of the First-class.

Appeal from orders of Assistant Collectors of first class on certain applications.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

* The words quoted have been inserted by Act XIV. of 1886, s. 5.

† This reference should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

(*a*) on applications under section 99;*
(*b*) on applications under section 100.

Appeal from other orders of Assistant Collector of first class.

194. An appeal to the Collector of the District shall lie from all† orders passed under this Act by an Assistant Collector of the first class, except—

(*a*) orders on applications mentioned in section 98;
(*b*) orders on applications mentioned in "sections 99 and 100;" ‡
(*c*) orders passed in the course of a suit and relating to the trial thereof.

Final orders of Assistant Collector of first class.

195. § The orders of an Assistant Collector of the first class on applications mentiond in section 98 shall be final.

(*3*) *Collector of the District.*

Appeal from certain orders of Collector of District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

(*a*) under section 99;‖
(*b*) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final.‖

(*4*) *Commissioner of the Division.*

Finality of orders of Commissioner of Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final.‖

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

198. An appeal from the decisions of the Commissioner of Division, on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in "sections 99 and 100," ¶ shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

In such case the provisions of section 199 shall apply.

Power of Board to call for cases, and pass orders thereon.

199. The Board may, "notwithstanding anything hereinbefore contained,"** at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon consistent with this Act, as the Board thinks fit.

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* Here certain words, repealed by Act XIV. of 1886, s. 6, have been omitted.

† Here the word "other," being repealed by Act XIV. of 1886, s. 7, has been omitted.

‡ The words and figures quoted have been substituted by Act XIV. of 1886, s. 7, for the word and figures "section 99."

§ S. 195 has been substituted by Act XIV. of 1886, s. 8.

‖ Here certain words, repealed by Act XIV. of 1886, s. 6, have been omitted.

¶ In s. 198, the words and figures quoted have been substituted by Act XIV. of 1886, s. 9, for the word and figures "section 100."

** In s. 199, the words quoted have been inserted by Act XIV. of 1886, s. 10.

Act XII. of 1881.

Time for appealing.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Admission of appeals after prescribed period.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

Power of Board to review its orders.

201A. The Board may review, and may rescind, alter, or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Reviewing of applications not open to appeal.

201B. In the case of any application in which the order of the Commissioner, Collector of the District, or Assistant Collector, is final, as provided in sections 195, 196, and 197, such Commissioner, Collector, or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce, at the time of trial.

CHAPTER IX.

MISCELLANEOUS.

Time to be excluded in computing limitation-period.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

Rule as to last day for presentation or deposit, when Court is closed on such day.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into Court, the day on which the Court re-opens shall be deemed to be such last day.

Power to state case involving point of law for opinion of District Judge.

204. *(a)* If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a Civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner, as nearly as may be, as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.*

* This reference to s. 619 of Act X. of 1877 should now be read as applying to s. 619 of Act XIV. of 1882.—See s. 3 of the latter Act.

(*b*) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment. Act XII. of 1881.

(*c*) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure,* an appeal shall lie from the judgment of the District Judge to the High Court.

(*d*) The District Judge shall return the case with the opinion of the Civil Court to the Collector of the District, and the Revenue Courts shall decide the suit or application in accordance with such opinion.

(*e*) The costs attending such case shall be dealt with as costs in the suit or on the application in the Revenue Court.

205. (*a*) If in any suit instituted, or on any appeal presented, in a Civil or Revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court question as to jurisdiction.

(*b*) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(*c*) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any Civil or Revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the Appellate Court, unless such objection was taken in the Court of first instance; but the Appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the Appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the Appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure* relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the Appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate Appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate, or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a Civil Court, such Revenue Court may, by order in writing, require any party to such suit or applica-

Power to refer party to Civil Court.

* These references should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

Act XII. of 1881.

tion to institute, within such time as it may appoint in this behalf, a suit in the Civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him:

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the Civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff, not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may, from time to time, make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18, and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95,

(*e*) as to the transfer of appeals to Collectors under section 100B.*

All such rules shall be published in the local official gazette, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may, from time to time, make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212 When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear, unless it remains unpaid after the date fixed by such rule.

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* Cl. *e* has been inserted by Act XIV of 1886, s. 11.

THE FIRST SCHEDULE.

FORM A.—(*See section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent, *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B.—(*See section 52.*)

Court of the Collector of , dated the day of

To E. F., &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C.—(*See section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description, and address of the owner of the property.*]

WHEREAS the said *A. B.* has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 18 .

FORM D.—(*See section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated .

In the Court of .

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for , you are hereby required to appear in person in this Court on the day of . [*if not specially required to appear in person, state,* "in person

Act XII. of 1881.

or by an agent who has personal knowledge of this subject; or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E.—(*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18 .

FORM F.—(*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for (*here specify particulars of claim as given in the plaint*), and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G.—(*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, *E. F.*, hereby declare myself surety for the said *C. D.'s* appearance as aforesaid, and, in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H.—(*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 18 , to pay to *A. B.* the sum of and for costs of suit amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.* and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I.—(*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 18 , to pay to *A. B.* the sum of and for costs of suit amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.* on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED IN THE FIRST INSTANCE FROM THE OPERATION OF THE ACT.

I. The Province of Kumáon and Garhwál.

II. The Tarai Parganas, comprising—Bázpúr, Káshípúr Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilherí.

III. The portion of the Mirzápúr District lying to the south of the Kaimor Range.

IV. The Family Domains of the Maháráját of Benares, comprising the following parganas:—

Bhadohi and Kera Mángror in the Mirzápúr District.

Kaswár Rajá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra-Dún District.

Act XIII. of 1881.

ACT XIII. OF 1881.

THE FORT WILLIAM ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH MARCH 1881.

An Act to provide for the Better Government of Fort William.

Preamble.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal, and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Fort William Act, 1881;"

Commencement.

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers, and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2.* The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor-General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor-General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor-General in Council may invest officer with power to try breaches of rules.

4. The Governor-General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section 3.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency

* Under s. 2 the limits of the Fort have been defined in Notification No. 498, dated Sep. 12, 1884.—See *Gazette of India*, 13th idem, Pt. I., p. 326.

Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence, or order of such Magistrate under this Act shall be final. Act XIII. of 1881.

Power to arrest without warrant.

6. Any police-officer, or any other person empowered in this behalf by the Governor-General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to police-officer to release in bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. [*Repealed by Act XII. of 1891, Sch. I.*]

THE SCHEDULE.

(*See section 3.*)

(1.) Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2.) Removing night-soil without a covering or at unauthorized hours.

(3.) Camp-followers, servants, and others not keeping the godowns they live in clean.

(4.) Performing offices of nature in other than the appointed places.

(5.) Bathing, or washing clothes or animals, in the *cutwette* or other unauthorized places.

(6.) Selling unwholesome articles of food, grain, or drinks.

(7.) Adulterating food or drinks.

(8.) Making evacuations in unauthorized places.

(9.) Rash or negligent driving.

(10.) Picketting, training, or breaking in animals.

(11.) Causing obstruction by vehicles on the road.

(12.) Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort-pass.

13.) Beating drums or tom-toms.

(14.) Damaging lamps, posts, masonry, or other Government-property in any part of the Fort.

Act XIII. of 1881.

(15.) Disorderly behaviour in the public thoroughfares.

(16.) Gambling.

(17.) Spitting pán on any of the public staircases, gateways, walls, and verandahs, or defacing in any way the walls of barracks, buildings, or gateways.

(18.) Throwing slops into the drains.

(19.) Washing cooking-pots at the water-taps and wasting water.

(20.) Cooking in unauthorized places.

(21.) Hanging clothes to dry on the guns or masonry-work.

(22.) Laying out clothes, accoutrements, or stable-bedding after the authorized hours.

(23.) Destroying the trees, bushes, or plants, or climbing trees.

(24.) Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25.) Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26.) Being drunk and incapable.

(27.) Fighting, quarrelling, and creating a disturbance, or making unnecessary noise of any kind.

(28.) Affixing bills and papers on any walls in the Fort.

(29.) Cutting grass or interfering with the grass-contractor.

(30.) Declining to show a tin pass when called upon to do so.

(31.) Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32.) Driving vehicles without lights or with insufficiently greased wheels.

(33.) Swinging or sitting on the chain-fences.

(34.) Interfering in any way with the guns, carriages, or piles of shot and shell on the works, or with the packed ordnance.

(35.) Mounting the ramparts or parapets or entering the embrasures without authority.

(36.) Smuggling liquor into the Fort.

(37.) Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38.) Carrying lights except in closed lanterns, or letting off fire-works.

(39.) Removing property of any kind or description from the Fort without written authority.

(40.) Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41.) Slaughtering animals or exposing carcasses or offal within the Fort.

(42.) Keeping dogs or poultry in unauthorized places.

(43.) Buying, selling, or receiving any portion of a soldier's kit.

(44.) Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45.) Occupying buildings of any kind without proper allotment.

ACT XIV. OF 1881.

Act XIV of 1881.

THE BENARES FAMILY DOMAINS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH MARCH 1881.

An Act to amend Bengal Regulation VII. of 1828.

Preamble.

WHEREAS it is expedient to amend Bengal Regulation VII. of 1828 (*for amending the Provisions of Regulation XV. of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Benares Family Domains Act, 1881:"

Commencement of Act.

And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

2. [*Repealed by Act XII. of 1891, Sch. I.*]

New section substituted for section 3 of same Regulation.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

Superintendence of mahâls vested in Commissioner.

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI., 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Act XIV. of 1881.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted; and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 13.

9. In the same Regulation, section 13, for the words "Governor-General in Council" the words "Board of Revenue" shall be substituted.

Amendment of, and addition to, same Regulation, section 16.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV., 1795," the following shall be substituted, namely:—

"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

And to the same section the following shall be added, namely:—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

Amendment of same Regulation, section 21.

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII. of 1814" to the end of the section, the following shall be substituted, namely:—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Sections substituted for sections 22 to 26 of same Regulation.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say:—

Power to make rules.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rules shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

Procedure in case of doubt as to Judge's jurisdiction.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed

with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal. Act XIV. of 1881.

"The order of the said Board on any such reference shall be final.

Operation of general Acts.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

Interpretation-clause.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

'Board of Revenue:'

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Regulations.'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

Validation of past orders, &c.

13. All orders heretofore passed by the Governor-General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII. of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

14. [*Repealed by Act XII. of 1891, Sch. I.*]

Clause added to Act XV. of 1874, s. 8.

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely:—

'(*jj*) extend to Pargana Bhadohi or Pargana Kera Mángror in the Mirzápúr District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

Act XV. of 1881.

ACT XV. OF 1881.*

THE INDIAN FACTORIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1881.

An Act to regulate labour in Factories.

Preamble. WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows:—

Preliminary.

Short title and local extent. **1.** This Act may be called "The Indian Factories Act, 1881."

It applies to the whole of British India.†

Interpretation-clause. **2.** In this Act, unless there is something repugnant in the subject or context,—

'factory:' "factory" means any premises (other than indigo factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport, or sale, any article or part of an article; and

(*a*) wherein steam, water, or other mechanical power is used in aid of any such process; and

(*b*) wherein, subject to the provisions of section 20, not less than fifty persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and‡

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

"child:" "child" means a person under the age of fourteen§ years:

"mill-gearing:" "mill-gearing" includes every shaft, whether upright, oblique, or horizontal, and every wheel, drum, pulley rope, driving strap, or band by which the motion of the first moving power is communicated to any machine:

"employed." a person‖ who works in a factory, whether for wages or not,¶ in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in

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* Act XV. of 1881, as amended by Act XI. of 1891, came into force from 1st January 1891.—See Act XI. of 1891, s. 1. A reference in any enactment or document to the Indian Factories Act, 1881, shall be read as a reference to that Act as amended by Act XI. of 1891.—See Act XI. of 1891, s. 19.

† Here the words "and it shall come into force on the first day of July 1881," have been omitted, having been repealed.—See Act XI. of 1891, s. 2.

‡ Cl. *b* has been substituted for the original.—See Act XI. of 1891, s. 3.

§ The word "fourteen" has been substituted for the word "twelve."—See Act XI. of 1891, s. 5.

‖ The word "person" has been substituted for the word "child."—See Act XI. of 1891, s. 4 (*1*).

¶ Here the word "either" has been omitted, having been repealed.—See Act XI. of 1891, s. 4 (*2*).

any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act. Act XV. of 1881.

Inspectors and certifying surgeons.

Inspectors.

8. The Local Government may in its discretion, by notification in the official Gazette, appoint, "by name or by office,"* such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

The District Magistrate shall, in virtue of his office, be an Inspector of all factories, if any, in his district.†

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Local Government may from time to time indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,—

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the purposes‡ of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act,—

until the age of such person has been certified, in the manner hereinafter provided, to be above nine§ years, or

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above fourteen‖ years.

Certifying surgeons.

5. The civil surgeon or such other person practising medicine or surgery as the Local Government may from time to time appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, "and on payment by such person of such fee, if any, as may from time to time be prescribed by the Governor-General in Council by notification in the *Gazette of India*,"¶ examine such person and

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* The words quoted have been inserted.—See Act XI. of 1891, s. 6 (*1*).

† The second paragraph of s. 3 has been substituted for the original.—See Act XI. of 1891, s. 6 (*2*).

‡ The word "purposes" has been substituted for the word "provisions."—See Act XI. of 1891, s. 7.

§ The word "nine" has been substituted for the word "seven."—See Act XI. of 1891, s. 9.

‖ The word "fourteen" has been substituted for the word "twelve."—See Act XI. of 1891, s. 5.

¶ The words quoted have been inserted.—See Act XI. of 1891, s. 8.

* Act XV. of 1881. grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below nine* years or fourteen† years, as the case may be.

All Operatives.‡

Limited stoppage of work daily in certain circumstances.

5A. (*1*) In every factory, except a factory in which a system of employment in shifts or sets approved by the local Inspector is in force, there shall, between noon and two o'clock in the afternoon, be a stoppage of work for a full half-hour:

(*2*) Provided that nothing in this section shall apply to any factory of a class to which the Governor-General in Council has, by notification in the *Gazette of India*, declared this section not to apply.

Holidays.

5B. (*1*) No person shall be employed in any factory on a Sunday:

(*2*) Provided as follows:—

(*a*) any manager, foreman, mechanic, artisan, or labourer, may be employed in a factory on a Sunday in examining or repairing, or in supervising or aiding in the examination or repair of, any machinery or other thing whatsoever necessary for the carrying on of the work performed in the factory;

(*b*) any person may be employed in a factory on a Sunday if he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday;

(*c*) the Local Government may from time to time, by notification in the official Gazette, declare sub-section (*1*) of this section not to apply to any factory or class of factories (the factory or class being described in the notification) in which the work performed—

(*i*) necessitates continuous production for technical reasons, or

(*ii*) supplies the public with articles of prime necessity which must be made every day, or

(*iii*) by its nature cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces; and

(*d*) the Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare sub-section (*1*) of this section not to apply to factories of any class described in the notification.

Women.

Employment of women.

6. (*1*) No woman shall be employed before five o'clock in the morning, or after eight o'clock in the evening, in any factory in which a system of employment in shifts or sets approved by the local Inspector is not in force.

(*2*) No woman shall be actually employed in any factory in any one day for more than eleven hours.

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* The word "nine" has been substituted for the word "seven."—See Act XI. of 1891, s. 9.

† The word "fourteen" has been substituted for the word "twelve."—See Act XI. of 1891, s. 5.

‡ The portion commencing from the heading "*All Operatives*" to the end of s. 11 has been substituted.—See Act XI. of 1891, s. 10

(3) Every woman shall be allowed an interval or intervals of rest amounting in the aggregate to at least an hour-and-a-half in the day when she is actually employed for eleven hours, and to a proportionately less time when she is actually employed for less than eleven hours. Act XV. of 1881.

(4) The Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare all or any of the foregoing sub-sections of this section not to apply to factories of any class described in the notification or to women employed in any process so described.

Children.

Employment of children.

7. (1) No child shall be employed in any factory if he is under the age of nine years.

(2) No child shall be employed in any factory before five o'clock in the morning or after eight o'clock in the evening.

(3) No child shall be actually employed in any factory for more than seven hours in any one day.

(4) Every child who is actually employed in any factory for six hours in any one day shall be allowed an interval or intervals of rest amounting in the aggregate to at least half-an-hour.

Prohibition of employment of child in certain dangerous work.

8. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel, or other mechanical power, as the case may be.

Register of children in a factory.

9. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may from time to time prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Women and Children.

Provisions supplementary to sections 6 and 7.

10. (1) The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the district in which the factory is situated, showing the times at which such intervals as are required by section 6, sub-section (3), and section 7, sub-section (4), to be allowed to women and children, respectively, shall be allowed, and the length of each interval.

(2) A woman or child shall not be deemed to be actually employed within the meaning of section 6 or section 7 during any such interval as aforesaid.

Prohibition of employment of woman or child in two factories on same day.

11. No occupier of a factory shall employ therein on any day any woman or child who has to his knowledge already been employed on the same day in any other factory.

Fencing.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine,* water-wheel, or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

* Here the word "or" has been omitted, having been repealed.—See Act XI. of 1891, s. 11.

Act XV. of 1881.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous, if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

Notice to be given of accidents.

13. When any accident occurs in a factory causing death or bodily injury, whereby the person injured is prevented from returning to his work in the factory during forty-eight hours next* after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of the† accident to such authorities in such form and within such time as the Local Government may from time to time by rule direct.

Person beginning to occupy factory to give notice.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory and of‡ the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person§ under whom the business of the factory is to be carried on.

Penalties.

Penalties.

15.‖ (*1*) Any person who, in breach of this Act or of any order or rule made thereunder,—

(*a*) employs any person in any factory;

(*b*) allows any child to perform the work forbidden by, or to work in contravention of, section 8;

(*c*) neglects to keep a register in manner prescribed under section 9;

(*d*) neglects to set up or maintain the notice required by section 10, sub-section (*1*);

(*e*) neglects to fence any machinery or mill-gearing in any factory;

(*f*) neglects to maintain a supply of water for the use of persons employed in any factory;

(*g*) neglects to ventilate any factory, or to keep any factory in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance;

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* The word "next" has been inserted.—See Act XI. of 1891, s. 12.

† The word "the" has been substituted for the word "such."—See Act XI. of 1891, s. 12.

‡ The words "and of" have been inserted.—See Act XI. of 1891, s. 13 (*1*).

§ Here the words "(if any)" have been omitted, having been repealed.—See Act XI. of 1891, s. 13 (*2*).

‖ S. 15 has been substituted.—See Act XI. of 1891, s. 14.

(*h*) suffers any factory to be so overcrowded, while work is carried on therein, as to be injurious to the health of the persons employed therein; or Act XV, of 1881.

(*i*) neglects to send any notice or furnish any return,

shall be punished with fine which may extend to two hundred rupees: Provided that—

(*i*) no prosecution under this sub-section shall be instituted except by, or with the previous sanction of, the local Inspector; and

(*ii*) no person shall be liable under this sub-section to more than one penalty for any one description of offence committed on the same day, except where two or more persons are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each person so employed.

(2) Any person who corruptly uses, or attempts to use, as a certificate granted to himself under section 5, a certificate granted to another person under that section, or who, having procured a certificate under the said section, corruptly allows it to be used, or an attempt to use it to be made, by another person, shall be punished with fine which may extend to twenty rupees.

Burden of proof as to age.

16. Where an act or omission would, if a person were under nine* or fourteen† years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying surgeon, that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act or orders or rules thereunder.

17.‡ Every occupier of a factory shall be deemed primarily liable for any breach therein of this Act or of any order or rule made thereunder; but he may discharge himself from such liability by proof that such breach was committed by some other person without his knowledge or consent, and in that case the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rule.

18.§ (1) Subject to the control of the Governor-General in Council, the Local Government may from time to time make rules consistent with this Act to provide for—

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the water-supply to be maintained for the use of persons employed in factories;

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* The word "nine" has been substituted for the word "seven."—See Act XI. of 1891, s. 9.

† The word "fourteen" has been substituted for the word "twelve."—See Act XI. of 1891, s. 5.

‡ S. 17 has been substituted.—See Act XI. of 1891, s. 15.

§ S. 18 has been substituted.—See Act XI. of 1891, s. 16.

Act XV. of 1881.

(*c*) the ventilation of factories and their cleanliness (including lime-washing, painting, varnishing, and washing) and freedom from effluvia arising from any drain, privy, or other nuisance;

(*d*) the prevention of such overcrowding of factories, while work is carried on therein, as is likely to be injurious to the health of the persons employed therein;

(*e*) the inspection of factories;

(*f*) the manner in which appeals under this Act are to be presented and heard; and

(*g*) otherwise carrying out the purposes of this Act.

(*2*) The Governor-General in Council may from time to time make rules requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of this Act.

(*3*) Such rules shall be published in the local official Gazette or the *Gazette of India*, as the case may be, and shall thereupon have the force of law.

(*4*) Before making rules under clause (*b*), clause (*c*), or clause (*d*) of sub-section (*1*) of this section the Local Government, and before making rules under sub-section (*2*) of this section the Governor-General in Council, shall publish, in such manner as may in its or his opinion be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date (not less remote than two months from the publication of the notice) at or after which the draft will be taken into consideration, and shall consider any objection or suggestion which may be received from any person with respect to the draft before the date so specified.

Crown factories.

19. This Act shall apply to factories belonging to the Crown: provided that, in case of any public emergency, the Governor-General in Council or the Local Government may, by an order in writing, exempt any* factory from this Act to such extent and during such period as the Governor-General in Council or the Local Government, as the case may be, thinks fit.

Power to Local Government to extend definition of "factory."

20.† Notwithstanding anything in clause (*b*) of the definition of the word "factory" in section 2, the Local Government may from time to time, by notification in the official Gazette, declare any premises, or premises of any class, which fulfil the other conditions of the said definition, to be a factory for all the purposes of this Act, or for such of those purposes as may be specified in the notification, if the number of persons simultaneously employed in the premises on any day in any manual labour in, or incidental to, any such process as is referred to in the said clause (*b*) is less than fifty, and not less than twenty.

(*2*) The Local Government may, by such notification, fix any number below fifty, and not below twenty, as the number of persons whose simultaneous employment as aforesaid is to be held to subject premises, as a factory, to all or any of the provisions of this Act and of the orders and rules made thereunder.

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* Here the word "such" has been omitted, having been repealed.—See Act XI. of 1891, s. 17.

† S. 20 has been added.—See Act XI. of 1891, s. 18.

ACT XVI. OF 1881.

THE OBSTRUCTIONS IN FAIRWAYS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1881.

An Act to empower the Government to remove or destroy Obstructions in Fairways, and to prevent the Creation of such Obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded, or abandoned, or any fishing-stake, timber, or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate* or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If, after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Local Government in respect thereof,

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* See Act X. of 1882, s. 3.

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the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores, or ballast of a vessel, and any proceeds arising from the sale of a vessel and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation, or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes* and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor-General in Council or a Local Government, previous

* See Act X. of 1870.

to the passing of this Act, such removal, destruction, regulation, or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

Saving of other powers possessed by Government.

ACT XVII. OF 1881.

THE PORTUGUESE CONVENTION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH MAY 1881.

An Act to give effect to the Convention between the Governors-General of British India and Portuguese India regarding their respective systems of moneys, weights, and measures.

Preamble.

WHEREAS, by the fifth Article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights, and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same Article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January 1880:

And whereas, in pursuance of the said recited Article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law:

Act XXIII. of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said

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Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

WHEREAS, by the fifth Article of a Treaty of Commerce and Extradition, executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights, and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January 1880:

In pursuance of the said Article, the following Convention has been made:—

1. The Governor-General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I., Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor-General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;
Half-rupee, weighing 90 grains troy;
Quarter-rupee, weighing 45 grains troy;
Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee	Five thousandths.	Two thousandths.
Half-rupee		
Quarter-rupee	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga* weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

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Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India.

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reales* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor-General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor-General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining, or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor-General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth Article of the above-cited Treaty;

(*c*) advance to the Governor-General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin and in such instalments (if any), as the said Governor-General of Portuguese India may require: provided—

1stly.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2ndly.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

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3rdly:—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor-General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor-General of Portuguese India of any silver bullion or coin at the mint at Bombay, or at such other mint as the said Government, from time to time, appoints, deliver to the said Governor-General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject always to the same duty, charges, fees, and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four *lákhs* of rupees in any one year;

(*b*) coin for the Governor-General of Portuguese India, the copper coins established by this Convention, to such amounts and in such denominations as the said Governor-General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor-General of British India engages to pay the Governor-General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed, or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin, which has been issued by the authority of the Government of British India, shall, to the said same extent, and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor-General of Portuguese India agrees that, if at any time while this Convention continues in force, the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like man-

ner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India. Act XVII. of 1881.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin, and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; and the expense so incurred shall be borne by the Government of British India.

11. The Governor-General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12 Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish a any time such system of paper currency as he may deem fit.

The Governor-General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government, and payable to the bearer.

13. The Governor-General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor-General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor-General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

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14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor-General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,

Governor-General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,

Viceroy and Governor-General of British India.

ACT XVIII. OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH JUNE 1881.

An Act to consolidate and amend the Law relating to Land-revenue and the Powers of Revenue-officers in the Central Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Central Provinces Land-revenue Act, 1881:"

Local extent.

It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces;*

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* Here the words, "except those specified in Part VI. of the First Schedule of the Scheduled Districts Act, 1874," repealed by Act VI. of 1889, s. 3, have been omitted.

and it shall come into force on such day* as the Chief Commissioner, with the previous sanction of the Governor-General in Council, may direct by notification in the local official Gazette.

Commencement.

2. [*Enactments repealed.*] *Repealed by Act XII. of 1891, Sch. I.*

3. [*Pending proceedings.*] *Repealed by Act XII. of 1891, Sch. I.*

Interpretation-clause.

4. In this Act, unless there is something repugnant in the subject or context,—

"Assistant Commissioner."

(1) "Assistant Commissioner" includes also "Extra Assistant Commissioner:"

"Legal Practitioner."

(2) "Legal Practitioner" means an advocate, vakil, or attorney of any High Court, a pleader, mukhtár, or revenue-agent:

"Village-cess."

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, "or to their transferees or assignees as such, or to the patel,"† and includes service rendered, or things furnished, as well as money paid:

"Recognized agent."

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications, and to do other acts on his behalf in such proceeding, and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year:"

(5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified district or districts, from time to time, appoint:

"Sír-land:"

(6) "Sír-land" means—

(*a*) land which was recorded as 'sír' in the papers of the last preceding settlement of the local area in which the land is situate;

(*b*) land which was not so recorded, but which, at the commencement of the Central Provinces Land-revenue Act, 1889, was occupied by, and had been cultivated by, the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years;

(*c*) waste-land which has been broken up by the proprietor or one of the proprietors thereof, and cultivated by him for a period of not less than six consecutive years;

and includes also in the Sambalpur district land which was recorded as 'bhogra' in the papers of the last preceding settlement of the local area in which the land is situate.

Explanation I.—Land (other than bhogra) which, at the commencement of the Central Provinces Land-revenue Act, 1889, was unoccupied by such proprietor, and which had, after the date of such settlement, or the expiration of such period of twelve years, or six years (as the case may be), been so unoccupied for a period of six consecutive years, is not sír-land. Land is occupied by the proprietor when it is leased out by him with an express reservation of his sír-rights.

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* Nov. 4, 1881.—See *Central Provinces Gazette*, 1881, Pt. II., p. 176.

† In s. 4, cl. 3, the words quoted have been inserted by Act XVI. of 1889, s. 4.

Act XVIII. of 1881.

Explanation II.—In this definition the word 'proprietor' includes an assignee of proprietary rights, and land is said to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation.

Explanation III.—When by any local custom land is liable to exchange or re-distribution among the cultivators thereof, land, which is not sír-land, and which is taken in exchange for sír-land, becomes sír-land, and the sír-land given in exchange for that land ceases to be sír-land :*

"Survey-number :"

(6*a*) "Survey-number" means a local area held by, or intended to be settled with, a raiyat under a separate assessment of land-revenue in a village or estate which is the property of the Government :†

"Mahal :"

(7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál, "but does not include a survey-number :"‡

"Village :"

(8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act :

"Proprietor :"

(8*a*) "Proprietor," except in section 4, clause (6), and in sections 61, 62, 63, and 69, includes a gaontia of a Government village in the Sambalpur district : §

"Málguzár :"

(9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns, and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns :

"Málik-makbúzá :"

(10) "Málik-makbúzá" means any person owning one or more plots of land separately assessed with revenue in a mahál, and who is not a málguzár, inferior proprietor, or member of the proprietary body of the mahál : ‖

"Lambardár :"

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government :

"Sub-lambardár :"

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors :

"Mukaddam :"

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act :

"Patél :"

(13*a*) "Patél" means a person appointed in manner prescribed under this Act to represent a body of Government raiyats in their dealings with the Government : ¶

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* Cl. 6 of s. 4 has been substituted for the original by Act XVI. of 1889, s. 5.
† Cl. 6*a* has been inserted by Act XVI. of 1889, s. 6.
‡ In cl. 7 the words quoted have been inserted by Act XVI. of 1889, s. 7.
§ Cl. 8*a* has been inserted by Act XVI. of 1889, s. 8.
‖ Cl. 10 has been substituted for the original by Act XVI. of 1889, s. 9.
¶ Cl. 13*a* has been inserted by Act XVI. of 1889, s. 10.

(13*b*) "Pattí" means the lands allotted to any sharer or body of co-sharers in a mahál by an imperfect partition under this Act:*

"Pattí:"

(14) "Tenant" means a person who holds land of another person, and is, or, but for a special contract, would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee, or thekadár of proprietary rights.

"Tenant:"

Explanation I.—An inferior proprietor is not, as such, a tenant.†

Explanation II.—The holder of a survey-number in a village let in farm by the Government, or held by a gaontia in the Sambalpur district, is a tenant of the farmer or gaontia for the time being.†

Explanation III.—A person who is not an absolute occupancy-tenant or an occupancy-tenant, and who holds land from a málik-makbúzá or from the holder of a survey-number, is a sub-tenant of that land:†

(15) "Rent" means whatever is paid, delivered, or rendered, in money, kind, or service, by a tenant on account of the use or occupation of land let to him:

"Rent:"

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force,‡ or after such a settlement, but before this Act comes into force, was recorded by order of a Revenue or Settlement-officer in respect of such land as an "absolute occupancy-raiyát," or in terms equivalent thereto:

"Absolute occupancy-tenant:"

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.‡

"Record-of-rights."

PART II.

CHAPTER II.§

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

5. The Chief Commissioner shall, subject to the control of the Governor-General in Council, be the Chief Controlling Revenue-authority.

Chief Controlling Revenue-authority.

6.‖ (*1*) Besides the Chief Commissioner, there shall be the following classes of Revenue-officers, namely:—

Revenue-officers.

Commissioners;

Deputy Commissioners;

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* Cl. 13*b* has been inserted by Act XVI. of 1889, s. 10.

† Explans. I., II., and III. to cl. 14 have been substituted for the original Explanation by Act XVI. of 1889, s. 11.

‡ Nov: 4, 1881.

§ As to the application of s. 11 and ss. 15 to 26 to Settlement-officers and to proceedings before them, see s. 31.

As to the application of Act XVIII. of 1881, in cases under the Central Provinces Tenancy Act (IX. of 1883), in respect of powers and procedure of Revenue-officers and Settlement-officers, and appeals from their decisions or orders, see Act IX. of 1883, s. 64.

‖ S. 6 has been substituted for the original by Act XVI. of 1889, s. 12.

Act XVIII. of 1881.

Assistant Commissioners ;

Tahsildárs ;

Náib-tahsildárs.

(2) All Revenue-officers are subordinate to the Chief Commissioner ; all Revenue-officers in a division are subordinate to the Commissioner of the division ; and all Revenue-officers in a district are subordinate to the Deputy Commissioner of the district.

(3) An officer in charge of a village-survey in a district which is not under settlement may be invested by the Chief Commissioner with the powers of a Revenue-officer of any class, and, when so invested, shall be subordinate to such officer or officers as the Chief Commissioner may direct.

Appointment, suspension, and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor-General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners, and Assistant Commissioners.

Appointment suspension, and removal of Tahsildárs and Náib-Tahsildárs.

8. The Chief Commissioner shall appoint, and may suspend or remove Tahsildárs ; and may also make rules for regulating the appointment, duties, suspension, and removal of Náib Tahsildárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsildárs, and Náib Tahsildárs holding office as such in the territories to which this Act extends when this Act comes into force, shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners, and Tahsildárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsildár in any tahsil, or, with the sanction of the Governor-General in Council, to be an additional Commissioner or additional Deputy Commissioner in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner, or Tahsildár appointed under this section, with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner, or Tahsildár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsildár, or Náib-Tahsildár is transferred from one district or tahsil to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsil to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsil from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed, and such successor takes charge of his office, or until the person so disabled resumes charge of his office.

Chief Commissioner may alter limits of district or tahsil,

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsil, create new districts or tahsils, and abolish existing districts or tahsils.

Power to invest Revenue officers,—

15. The Chief Commissioner may, subject to the control of the Governor-General in Council, invest any Revenue-officer with any of the following powers :—

with power conferred by Code of Civil Procedure;

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure* on a Civil Court ;

with power to delegate powers.

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act ;

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

Power of Deputy Commissioner to distribute work.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal ; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference ; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

Power of superior Revenue-authorities to withdraw and transfer cases.

17. The Chief Commissioner, the Commissioner, or the Deputy Commissioner, may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him, and having power to dispose of the same.

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* The reference in s. 15 to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

Act XVIII. of 1881.

Power of Revenue-officers to enter on land, &c.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land; and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power for Revenue and Settlement-officers to require attendance of persons and production of documents.

18A.* (*1*) Any Revenue-officer or class of Revenue-officers and any officer appointed to make a settlement may, if specially empowered in this behalf by the Chief Commissioner, order all persons whose presence may be, in the opinion of the officer making the order, necessary for any of the purposes of this Act, to attend either in person or by authorized agent at any specified time and place, and may also direct them to produce any written document in their possession, and all such persons shall be legally bound to obey the order.

(*2*) The power to require the attendance of parties in person shall, so far as may be, be subject to the provisions of section 176 of the Code of Civil Procedure.

Power to make rules to regulate procedure.

19. The Chief Commissioner may, with the previous sanction of the Governor-General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure† shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Persons by whom appearances and applications may be made before and to Revenue-officers.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act, may be made or done—

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Obligation of parties to attend in person.

Legal practitioner's or agent's fees not allowed unless for special reasons.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-office unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Appeals.

22. An appeal shall lie against every decision or order‡ under this Act—

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner, exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

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* S. 18A has been inserted by Act XVI. of 1889, s. 13.

† The reference in s. 19 to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

‡ See s. 38, *infra*, for certain exceptions.

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division; Act XVIII of 1881.

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or,

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

Powers of revision of Commissioner and Deputy Commissioner.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit: Provided that he shall not, under this section, modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

Powers of revision of Chief Commissioner.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:*

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

Review of orders.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and, on so reviewing, modify, reverse, or confirm orders passed by himself, or by any of his predecessors in office:

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

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* As to restriction on record-of-rights, see s. 84, *infra*.

Act XVIII. of 1881.

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer, who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

Notification of revenue-survey.

27. Whenever it appears to the Chief Commissioner that a Revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area;

Effect thereof.

and thereupon all officers in charge of such survey, their assistants, servants, agents, and workmen, may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Notification of settlement.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor-General in Council, issue a notification of settlement,* and in such notification shall—

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

Power to amend notification.

and may, from time to time, with the like sanction, amend, alter, or cancel such notification.

Every such notification, amendment, alteration, and cancellation, shall be published in the local official Gazette.

Power to appoint Settlement-officers;

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer†) to control such settlement, and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

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* As to duration of settlement-operations, see s. 39, *infra*.

† Notwithstanding anything contained in s. 29, the Chief Commissioner shall be deemed to have, and to have had, authority to assign to the Settlement-officer the title "Assistant Settlement-officer," and to the Chief Settlement-officer the title "Settlement-officer."—See Act XVI. of 1889, s. 40, *infra*.

and to suspend and remove them.

The Chief Commissioner may suspend or remove any officer appointed under this section. Act XVIII. of 1881.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may from time to time direct.

Settlement-officer may be invested with powers of Deputy Commissioner.

31.* The provisions of section 11 and sections 15 to 26, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Certain provisions of Chapter II. applied to Settlement-officers.

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

Appointment of Settlement-Commissioner;

32. The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council,

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of "the last five classes"† of Courts described in section 4 of "the Central Provinces Civil Courts' Act, 1885,"† and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, "section 7,"† for the trial in the first instance of any of the following classes of suits instituted within such area, namely:—

Power to invest Settlement-officers with Civil Court powers.

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* S. 31 does not apply to suits and appeals or other proceedings before, or determined by, Settlement-officers in pursuance of powers conferred upon them under ss. 33-35. —See s. 37, *infra*.

† In s. 33 the words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

Act XVIII. of 1881.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries, or the like;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts;

(*d*) suits by muafidárs or assignees of revenue for arrears of revenue owing to them as such muafidárs or assignees;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance;

(*h*) suits relating to land, or the rent, profits, or occupation of land.

Chief Settlement-officer to have powers of Deputy Commissioner.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section 33, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in "the Central Provinces Civil Courts' Act, 1885, section 16 and section 17, sub-section (*1*), and the powers of a Court of a Commissioner described in the same Act, section 15, sub-section (*1*),"* with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

35. When any local area is under settlement, and Settlement-officers have been invested with the powers mentioned in section 33 in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of "the last four classes"† aforesaid, by Assistant Commissioners or Tahsildárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Division of civil work between Settlement-officers and ordinary Courts.

36. When any local area is under settlement, and the Settlement-officers therein have been invested with powers under section 33, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts:

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* In s. 34 the words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

† In s. 35 the words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer. Act XVIII. of 1881.

Provisions of section 31 not to apply to certain suits.

37. Nothing in section 31 shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section 33, 34, or 35.

Appeal, reference, and revision.

38. Except as provided in sections 33, 34, and 35, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference, and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section 22 from such decrees or orders.

Duration of settlement-operations.

39. Every settlement notified under section 28 shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Cases pending at close of settlement-operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease, and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs; or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

Settlement-officer to invite claims to lands appearing to have no owner.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification, declaring his intention to demarcate such lands as the property of the Government, and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing, setting forth such claims and the respective grounds thereof.

Application of Act XXIII. of 1863.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII. of 1863 (*to provide for the adjudication of claims to waste lands*), section 1;

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

Act XVIII. of 1881.

Procedure when limited right over land established.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to, or over, any land comprised in such notification, is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII. of 1863, section 7, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Mahâls.

Power to form mahâls.

43. The Settlement-officer may declare any local area to be a mahâl.

Excluded Lands.

Settlement-officer may exclude any town or land from settlement-operations.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site, and determine the limits of such town or land:

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section 28 shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

Erection of new, and repair of existing, boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area, "or who are in possession of the whole or any part of the land as gaontias or as thikadârs of Government land, or as raiyats who have accepted the assessment of a survey-number,"* to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahâls, fields, or other lands in their possession, or to repair boundary-marks already existing; and may fix a reasonable time for obeying his order;

and, if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

Separate sum to be assessed on every mahâl.

Progressive assessments.

46. On every mahâl a definite and separate sum shall be assessed as land-revenue; but the sum so assessed may be reduced in such manner, and to such extent, as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

* In s. 45 the words quoted have been inserted by Act XVI. of 1889, s. 14.

Act XVIII. of 1881.

Provided that the Chief Commissioner may declare that any mahál which consists wholly or principally of forest is a forest-mahál, and may direct that the assessment shall be a specified share of the gross or net annual value of the produce of the mahál, to be determined from time to time for each year, or part of a year, or that the assessment shall be in the form of rates chargeable on the produce of the mahál in each year or part of a year.*

Matters as to which Chief Commissioner is to instruct Settlement officer.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

What land taken into account in assessing mahál.

48. In assessing a mahál all land situate therein shall be taken into account except the following, that is to say:—

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force;

(*c*) land excluded from assessment under section 44;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained;

(*e*) land which the Chief Commissioner, subject to the control of the Governor-General in Council, may, from time to time, exempt from assessment.

Assessment to whom to be offered.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál: provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahál is assessed and to the profits to which the superior proprietors are entitled under section 49.

* In s. 46 the proviso has been added by Act XVI. of 1889, s. 15

Act XVIII. of 1881.

Power to give directions as to payment of certain profits of superior proprietors.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior proprietors are entitled under section 49 shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue, and shall be paid to the superior proprietors from the Government Treasury.

Power to make rules for reporting assessment for sanction.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Offers of assessment to be made subject to revision and confirmation.

53. In making any offer of assessment, the Settlement-officer shall state that it is made subject to confirmation by the Governor-General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Option to accept or refuse assessment.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Mode of acceptance.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may from time to time prescribe in this behalf, and deliver the same to the Settlement-officer.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

55.* Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign, and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Effect of acceptance of assessment.

56.* Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Assessment may be rescinded by Chief Commissioner;

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor-General in Council;

or by Governor-General in Council.

2ndly—the Governor-General in Council may rescind any assessment submitted to him for confirmation;

Málguzárs may object to continuance of assessment beyond term of settlement.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force be-

* As to the application of ss. 55 and 56 to raiyatwari settlements, see s. 67G.

yond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force. Act XVIII. of 1881.

When assessment is in form of rates, Deputy Commissioner to publish record of amount payable.

56A.* (*1*) If the assessment accepted is a specified share of the produce of a forest-mahál to be determined from time to time, or in the form of rates chargeable on the produce of a forest-mahál, the Deputy Commissioner shall, from time to time, as the conditions of the assessment may require, notify to the málguzár, on or before such date, or at such intervals as the Chief Commissioner may prescribe, the amount payable in respect of the forest-mahál.

(*2*) The Deputy Commissioner and his subordinates may at any time enter on the forest-mahál, and do all acts necessary for ascertaining the amount payable in respect thereof.

Procedure when assessment is refused.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section 54 the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when only some proprietors accept assessment.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it, the mahál shall be dealt with under the provisions of section 57.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement officer shall proceed as provided in section 57;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it, or may deal with the mahál under section 58;

* S. 56A has been inserted by Act XVI. of 1889, s. 16.

Act XVIII. of 1881.

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

Procedure on refusal of assessment by inferior proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section 50, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Allowance to excluded proprietors.

61. Any proprietor excluded from settlement under section 57 or section 59, clause (*a*), shall be entitled to receive from the Government an annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

Excluded proprietors to have occupancy-rights in their sír-land.

62. Any proprietor excluded from settlement or sub-settlement under sections 57 to 60, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

63. The aggregate amount of any allowance under section 61, and of the difference between the rent fixed under section 62 and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Sub-settlement with málik-makbúzás and other like holders of land.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may, in his opinion, be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardár and mukaddams.

Revenue payable under sub-settlement to be first charge on land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Power to inquire into the claims of thekadárs, gaontias, or farmers.

65A.* The Settlement-officer may inquire into the claim of any person holding from a proprietor a village or part of a village as thekadár, gaontia, or farmer, and may, with the previous sanction of the Chief Commissioner, provide in the terms of settlement for the protection of such thekadár, gaontia, or farmer against arbitrary enhancement or ejectment:

Provided that the protection of a thekadár, gaontia, or farmer shall not be provided for under this section unless he or those from whom he has inherited was or were in possession of the village at the last settlement of the local area in which the village is situate, or unless it is proved to the satisfaction of

* S. 65A has been inserted by Act XVI. of 1889, s. 17.

the Settlement-officer that he or those from whom he has inherited has or have established the village or substantially improved it at his or their own cost. Act XVIII. of 1881.

Settlement-officer to apportion assessment over lands held in severalty:

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

to re-distribute land according to custom.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical re-distribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such re-distribution according to such custom.

*Procedure in Raiyatwári Settlements.**

Assessment of raiyatwári villages.

67A.* (*1*) The Chief Commissioner may make rules for the assessment of land held by raiyats direct from the Government.

(*2*) Such rules may provide for the subdivision of occupied and unoccupied land into survey-numbers, on each of which a separate assessment shall be made:

Provided that no such survey-number shall include land occupied in separate interests by more raiyats than one at the time of its formation.

(*3*) Where the lands of a village have been divided into survey-numbers on each of which a separate assessment has been made, the village may be declared by the Chief Commissioner to be a regularly settled raiyatwári village.

(*4*) The assessment made on a survey-number may be either fixed or progressive, or in the form of rates chargeable according to the results of each year or harvest.

Assessment to whom to be offered.

67B.* (*1*) The assessment of each survey-number in a regularly settled raiyatwari village shall, in the first place, be offered to the raiyat (if any) holding the survey-number.

(*2*) If such raiyat refuses to accept the assessment, he may be ejected as if for non-payment of revenue, and the assessment may be offered—

(*a*) to any co-partner of the ejected raiyat, and, if he also refuses,

(*b*) to any other person.

Assessment of unoccupied survey-numbers.

67C.* A survey-number formed from unoccupied land in a regularly settled raiyatwári village may be allotted by the Settlement-officer at the time of settlement or by the Deputy Commissioner during the currency of the term of settlement to any person who accepts the assessment made upon it.

Responsibility of raiyats for assessment.

67D.* (*1*) A raiyat who has accepted the assessment of a survey-number in a regularly settled raiyatwári village, and his representatives and assigns, shall be responsible for the

* This heading and ss. 67A to 67I have been inserted by Act XVI. of 1889, s. 18.

Act XVIII. of 1881.

payment of the land-revenue assessed on such survey-number during the term of settlement, unless he or they has or have relinquished the survey-number by presenting at the tahsil office a written notice of relinquishment.

(2) Such notice of relinquishment shall take effect from the first day of April next following the date of the presentation thereof.

Right of raiyat inheritable, but not transferable.

67E.* (1) The right of a Government raiyat in a survey-number held by him shall devolve as if it were land, but is not transferable except to a person who, if he survived the raiyat, would inherit his right, or to a co-sharer in such right, or, with the permission of the Deputy Commissioner, by a lease to a sub-tenant cultivating under the raiyat.

(2) The right of a raiyat in a survey-number held by him shall not be sold in execution of a decree.

(3) A raiyat is not entitled to claim partition of a survey-number, but the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, partition a survey-number, and apportion the assessment between the holders thereof.

(4) Nothing in this section shall affect the rights of raiyats on whom proprietary rights in survey-numbers held by them have been conferred by special orders.

Power to make rules for survey-numbers.

67F.* The Chief Commissioner may make rules—

(a) prescribing the procedure under which unoccupied survey-numbers may be allotted to raiyats during the currency of the term of a settlement;

(b) providing for the appointment, in the case of survey-numbers held by two or more raiyats in co-partnership, of one of such raiyats to be primarily responsible for the payment of the land-revenue assessed on such survey-numbers;

(c) providing, in cases in which the assessment is in the form of rates chargeable according to the results of each year or harvest, for the manner and time in and at which the amount chargeable is to be notified to the raiyat.

Provisions of sections 55 and 56 applicable to raiyatwári settlements.

67G.* The provisions of sections 55 and 56 shall, so far as they can be made applicable, apply to raiyatwári settlements made under this Act.

Land-revenue now payable by raiyats to be deemed to be fixed under this Act.

67H.* The land-revenue payable at the commencement of the Central Provinces Land-revenue Act, 1889, by raiyats holding survey-numbers in villages declared to be regularly settled raiyatwári villages, shall be deemed to have been assessed under the provisions of this Act.

Raiyats holding Government land not included in raiyatwári villages.

67I.* Raiyats who hold Government land not included in a regularly settled raiyatwári village, and who are not tenants within the meaning of this Act, shall be liable for the payment of such land-revenue as may be assessed in accordance with rules made under this Act on the land held by them:

* Ss. 67A to 67I have been inserted by Act XVI. of 1889, s. 18.

Provided that such a raiyat shall not be compelled to pay revenue for land which he has vacated before the first day of April next before the commencement of the agricultural year on account of which the claim for such revenue arises. Act XVIII. of 1881.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

Settlement-officer to ascertain proprietors.

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

Determination and record of sír-land.

69.* (*1*) The Settlement-officer shall ascertain and determine the extent of all the land held as sír-land as defined in section 4, clause (6), in each mahál, and shall record the same as sír-land, and shall also record as sír-land all land which is at the time of his inquiry cultivated by the proprietor or one of the proprietors thereof, and has been so cultivated for a period of not less than twelve consecutive years:

Provided that land so cultivated shall not be recorded as sír-land if it was recorded in the papers of the last preceding settlement of the mahál in which it is situate as tenant's land, or as land held by a tenant, or in terms equivalent thereto, and if by recording it as sír-land the total area of sír-land in the mahál will amount to more than a quarter of the cultivated area of the mahál.

(*2*) When a part of the land so cultivated has under this section to be omitted from the record of sír-land, the proprietor shall have the right to choose the particular fields which are to be omitted.

Settlement-officer to decide disputes among shareholders regarding management of mahál;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses, and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to determine through what lambardárs revenue shall be paid;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor, or málik-makbúzá, shall be paid.

to ascertain status and rents of tenants.

72. The Settlement-officer shall ascertain, and record for each mahál the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

Enquiry into claims to hold free from revenue as against Government.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

* S. 69 has been substituted for the original by Act XVI. of 1889, s. 19.

Act XVIII of 1881.

Power of Chief Commissioner to make rules.

The Chief Commissioner may, with the previous sanction of the Governor-General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Enquiry as to claims to hold free from revenue as against málguzárs.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

Chief Commissioner may make rules for disposal of such cases.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Time from which orders under sections 73 and 74 take effect.

75. When the Settlement-officer decides, under section 73 or section 74 that land which has been held free from revenue, or at less than a full assessment, is liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village watchman, or other village-servant to any customary dues or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village, or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Act XVIII. of 1881.

Procedure in cases under sections 68, 69, 70, 72, and 77, clauses (*b*), (*c*), and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections 68, 69, 70, 72, and 77, clauses (*b*), (*c*), and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute, or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision, and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person, deeming himself aggrieved by any decision under section 78, or by any decision of the Chief Settlement-officer in appeal therefrom, or by entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside, or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

No persons by whom the record-of-rights was signed, and no persons claiming through or under them, shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section 70 or section 77, clause (*b*), (*c*), or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor-General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section 83, duly made in a record-of-rights prepared in connection with such assessment, and duly attested, the power of revision conferred by sections 25 and 31, unless it is proved that such entry was made inadvertently.

Act XVIII. of 1881.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement-Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which, after consideration by such officer or Court, may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, she was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When, at any settlement made before this Act comes into force, málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places, and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner, and at the places on, in, and at which, they are payable when this Act comes into force.

"Arrear." "Defaulters."

91. When any sum payable under a settlement or sub-settlement, "or otherwise under an assessment made in accordance with this Act,"* is not paid within the time at which it is payable under section 90, such sum shall be deemed to be an arrear, and all the persons with whom such settlement or sub-settlement "or such assessment"* was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsildar's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.†

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share, or land under direct management;

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* In s. 91 the words quoted have been inserted by Act XVI. of 1889, s. 29.

† But see s. 114, *infra*, as to payment under protest

Act XVIII. of 1881,

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued:

(*h*) in the case of a raiyat who has accepted the assessment of a survey-number, by ejecting him from his holding:*

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic, or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*), and (*g*), shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*), and (*g*), may be enforced either in the district in which the default has been made, or in any other district.†

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section 94, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

Imprisonment of defaulter in civil jail.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Procedure in sales of moveable property.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

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* Cl. *h* has been inserted by Act XVI. of 1889, s. 21.

† As to procedure for enforcement in another district, see the Revenue Recovery Act (I. of 1890).

98. After causing any attachment to be made under section 94, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share, or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Management of mahál, share, or land attached under section 94 (*c*).

99. During the continuance of an attachment under section 98 the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land, and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Effect of attachment.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment, and, next, to discharging the arrear for the recovery of which the attachment was made.

Profits of land how applied.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Attachment when to cease.

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

102. When it is proposed to execute the process mentioned in section 94 clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment, to the satisfaction of the Deputy Commissioner.

Transfer under section 94 (*d*).

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land, except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Joint and several liability not affected by transfer.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahal or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Procedure after receipt of sanction to annulment of settlement.

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

Act XVIII. of 1881.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

Case of a portion of a mahál being managed or farmed.

104. When a portion only of the mahál is managed or let in farm under section 103, the rest of such mahal shall be separately re-settled with the proprietors thereof for the remainder of the term of settlement.

Settlement on expiry of management or farm.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer, to the persons entitled, under section 49, to an offer of assessment, a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself, or through an agent for such period.

Effect of annulment of settlement.

106. No leases, liens, or other incumbrances created by the defaulters, or by any person through or under whom they claim, of or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent, or lessee.

Saving of rights in sír-land.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section 94, clauses (*c*), (*d*), and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Nature of estate taken by purchaser of land sold for arrears due thereon.

108. Unless the Chief Commissioner, in sanctioning the sale, otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens, and other incumbrances, and all grants or contracts previously made by any person other than the purchaser in respect of such land, shall become void as against such purchaser.

Nothing in this section shall—

(*a*) affect the rights of any proprietor, superior or inferior to the defaulters, or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá, or tenant from express contract with such defaulters or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship, or manufactories, or for working mines, minerals, coals, and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force,

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

Rules for sale of immoveable property.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293, and 306 to 316, both inclusive, of the Code of Civil Procedure,* shall be followed, except in the following particulars (that is to say):—

(*a*) The defaulter may pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, and on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section 94 of this Act, declare that, subject to the provisions of section 108, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens, and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section 94, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words, "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased," were added thereto.

Pre-emption at sales.

110. In the course of a sale under section 94, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

Application of proceeds of sale of immoveable property.

111. The proceeds of every sale in execution of any process mentioned in section 94 shall be applied, first, in satisfaction of the arrear on account of which the sale was held, and

* These references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

Act XVIII. of 1881.

of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Costs recoverable as part of arrear.

112. The costs of serving a notice of demand under section 93 and of enforcing any process mentioned in section 94 shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Matters as to which Chief Commissioner may make rules.

113. The Chief Commissioner may make rules—

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section 93 and executing the processes mentioned in section 94;

(*b*) defining the classes of officers by whom the processes mentioned in section 94, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section 94 shall be executed.

Remedies open to person denying that sum demanded as an arrear is due.

114. Notwithstanding anything contained in section 92, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due, pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, the defendant shall not, except with the permission of the Court,—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116.* Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would

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* As to the application of s. 116 to the recovery of contributions for patwáris, see s. 146A (*2*), *infra*.

be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make. Act XVIII of 1881.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section 114 in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land, which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds, and on no others :—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under s. 83 it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement-officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Act XVIII. of 1881.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceed tion of any entry in the record-of-rig revision of such record-of-rights, he sha for the purpose of such correction or re the powers which the Chief Settlement-officer might have exercise proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notificat the official Gazette, direct that any specified custom, or condition, duly entered in the reco rights of any specified village, shall be enforce the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has b made violate or neglect any rule, custom, or co tion with respect to which the Chief Commissio has made a direction under this section, the Deputy Commissioner may, if penalty is provided by any law for the time being in force for such violation o neglect, recover from such person a penalty not exceeding two hundred rupees

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under sec tion 123 may institute a suit against Government to s aside such proceedings on the ground that no ru custom, or condition was, in fact, violated or neglected. If the Court fi that no rule, custom, or condition has been violated or neglected, it may, its order, annul such proceedings, and direct that any penalty paid by t plaintiff be refunded; and may also award to him such costs as he has nece sarily incurred in the proceedings, and such further sum as compensation it thinks fit.

Powers to control management of forests.

124A.* (1) When, under any record-of-rights or sanad or any agreeme with the Government, the proprietor or the superior inferior proprietor of any forest-land included withi or forming a mahál is bound to manage such forest-land in accordance wit rules or instructions prescribed by any Government officer, the Chief Commis sioner may make rules regarding the control and management of such fores land.

(2) If the proprietor or the superior or inferior proprietor, as the case may be, fails to observe the rules so made, the Deputy Commissioner may issue a notice calling on him to show cause, within a reasonable time to be specified in the notice, why he should not be excluded from the possession of the forest-land.

(3) If no sufficient cause is shown, the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, exclude such proprietor from the possession of the forest-land, and assume the direct management thereof for a term to be fixed by the Chief Commissioner.

(4) The costs of management shall be borne by the proprietor, or by the superior and inferior proprietors in such proportions as the Chief Commissioner may direct with reference to the amount of their respective interests in the forest or mahál, and shall be realizable as land-revenue.

(5) The profits of such forest-land, while under direct management, shall be paid to the proprietor, or to the superior and inferior proprietors in the proportions in which the costs of management are borne by them.

* S. 124A has been inserted by Act XVI. of 1889, s. 22.

(6) No leases, liens, incumbrances, or contracts created or made by the proprietor, or by any person through or under whom he claims, of, upon, or with respect to, the forest-land held under direct management, shall be binding upon the Deputy Commissioner during such management. Act XVIII. of 1881.

(7) The Deputy Commissioner may confiscate any timber or other forest-produce cut or removed in contravention of the rules made under sub-section (1).

(8) On the expiration of the period fixed for the direct management, the forest-land shall be restored to the proprietor, or superior or inferior proprietor, as the case may be.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(a) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein "from time to time"* subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(b) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right, or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiocy.

If the person so entering is a minor, lunatic, or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person, neglecting to give the notice required by section 126, shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section 125.

Fees for recording changes.

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section 125, and may fix the amount of such fees.

*In s. 125 (a) the words quoted have been inserted by Act XVI. of 1889, s. 23.

Act XVIII. of 1881.

from whom leviable. All fees so leviable shall be levied from the person in whose favour the change is made.

130. The Deputy Commissioner shall, in each year, make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Annual enquiry regarding and held free from revenue.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives), if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the division for the sanction of the Chief Commissioner.

Procedure on expiry of term of grant.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner, from time to time, directs.

Inspection of revenue-records.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes :—

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement-officers' powers.

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair ;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed ;

(*c*) declaring any local area to be a mahál ;

(*d*) settling lands from which the proprietors were excluded at settlement, and to which they have been or are about to be re-admitted ;

(*e*) settling mahálsin respect of which an application has been made under the third proviso to section 56 ;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs ;

(*g*) assessing lands gained by alluvion ;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement ;

(*i*) enquiring into the claims of thekadárs, gaontias, or farmers, and protecting them.*

* Cl. *i* has been added by Act XVI. of 1889, s. 24.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections 40, 41, and 42; or, Act XVIII of 1881.

with the sanction of the Governor-General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section 56.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing, or damaging a boundary-mark, may be ordered by the Deputy Commissioner, or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf, to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may, in the opinion of such officer, be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal, or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing, or damaging such mark cannot be discovered, or if, for any other reason, it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees, or farmers, "or, in the case of regularly-settled raiyatwarí villages, of the raiyats,"* of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

136. [*Partition of a mahál into two mahals.*] *Repealed by Act XVI. of 1889, s. 26.*

CHAPTER X.-A.†

PARTITION.

Perfect and Imperfect Partition.

Perfect and imperfect partition.

136. (*1*) Partition is either perfect or imperfect.

(*2*) Perfect partition means the division of a mahál into two or more maháls.

(*3*) Imperfect partition means the division of a mahál into two or more pattís jointly responsible for the revenue assessed on the whole mahál.

Persons entitled to imperfect partition.

136A. Any recorded co-sharer of a mahál, and any person in whose favour a decree has been passed awarding to him a proprietary interest in a mahál, whether such interest consists of a fractional share in the whole mahál or a part of the mahál, or of specific lands, is entitled to claim at any time imperfect partition of his share.

Persons entitled to perfect partition.

136B. Any recorded co-sharer in a mahál, not being a mahál

(*a*) in the Sambalpur district, or

(*b*) held by superior and inferior proprietors, and which the Chief Commissioner by rule declares to be incapable of perfect partition,

* In s. 35 the words quoted have been inserted by Act XVI. of 1889, s. 25.

† Ch. X.-A has been inserted by Act XVI. of 1889, s. 26.

Act XVIII. of 1881.

whose share, saving such part of it as may be impartible, has been completely separated from the rest of the mahál, and is held by him in severalty, is entitled to claim perfect partition of his share at the time of settlement of such mahál.

Jurisdiction of Civil Court barred as to partition.

136C. No Civil Court shall entertain any suit or application for the imperfect or perfect partition of a mahál.

Imperfect Partition.

Applications for imperfect partition to be made to Deputy Commissioner.

136D. (*1*) Applications for imperfect partition shall be made in writing to the Deputy Commissioner of the district in which the mahál is situate.

(*2*) If the mahál is situate in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Deputy Commissioners of those districts as the Chief Commissioner may direct.

Procedure on receipt of application.

136E. (*1*) The Deputy Commissioner, on receiving an application for imperfect partition, shall, if the application be in order, and not open to objection on the face of it, publish a notification of the same at his office, and at some conspicuous place on the mahál to which the application relates, and shall serve a notice on all such of the recorded co-sharers in the mahál as have not joined in the application, requiring any co-sharer in possession, who may object to the partition, to appear before him to state his objection, either in person or by a duly-authorized agent, on a day to be specified in the notice, not being less than thirty, or more than sixty, days from the date on which such notice was issued.

(*2*) Where, from any cause, notice cannot be personally served on any co-sharer, the notification shall be deemed sufficient notice under this section.

Objection to partition.

136F. If, on or before the day specified, any objection is made to the partition by any co-sharer in possession, and the Deputy Commissioner, on a consideration of such objection, is of opinion that there is good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Objection raising question of title.

136G. (*1*) If the objection raises any question of title or of proprietary right which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner may either decline to grant the application until the question in dispute has been determined by a competent Court, or may proceed to inquire into the merits of the objection.

(*2*) In the latter case the Deputy Commissioner, after making the necessary inquiry, and taking such evidence as may be adduced, shall record a judgment declaring the nature and extent of the interests of the party or parties applying for the partition, and of any other party or parties who may be affected thereby.

(*3*) The procedure to be observed by the Deputy Commissioner in trying such cases shall be that laid down in the Code of Civil Procedure for the trial of original suits, and he may, with the consent of the parties, refer any question arising in such case to arbitration, and the provisions of Chapter XXXVII. of the same Code, relative to arbitration, shall apply to such references.

Act XVIII. of 1881.

136H. (*1*) All decrees and orders passed by the Deputy Commissioner under the last foregoing section, deciding the rights of parties, shall be held to be decrees and orders of a Court of Civil Judicature, and shall be open to appeal as if passed by the Court of the Deputy Commissioner acting as a Court of Civil Judicature of first instance under the Central Provinces Civil Courts Act, 1885.

Effect of Deputy Commissioner's orders in such cases and appeals therefrom.

(*2*) Upon such appeal being made, the Court of appeal may issue a precept to the Deputy Commissioner, directing him to stay the partition pending the decision of the appeal.

136I. From any decree or order passed under the last-foregoing section by a Commissioner sitting as a Court of Appeal a second appeal shall, where a second appeal is by law allowed, lie to the Court of the Judicial Commissioner under the law for the time being in force relating to second appeals to that Court.

Second appeal in such cases.

136J. When it has been decided to make a partition under this chapter, the Deputy Commissioner may give the parties the option of making the partition themselves or of appointing arbitrators for the purpose, or he shall make the partition himself.

Option to parties to make partition themselves, or appoint arbitrators.

136K. Before commencing to make the partition, the Deputy Commissioner shall record a proceeding specifying the lands held in severalty, if any, and the land held in common, and laying down the principles to be followed in making the partition, with particulars of the method on which such principles are to be applied.

Proceeding to be recorded by the Deputy Commissioner before making partition.

136L. (*1*) The pattí of each sharer shall be made as compact as possible:

Each pattí to be made as compact as possible.

Provided that, so far as may be compatible with fairness of partition, lands held in severalty shall be left in the possession of the parties holding the same.

(*2*) No partition shall be disallowed solely on the ground of incompactness.

136M. (*1*) If, in making the partition, it be necessary to include in any pattí the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with any buildings thereon, on condition of his paying a reasonable ground-rent for it to the sharer into whose pattí it may fall.

Rule when house of one sharer is included in the pattí of another.

(*2*) The limits of such land and the rent to be paid for it shall be fixed by the Deputy Commissioner.

136N. (*1*) No sír-land belonging to any co-sharer shall be included in the pattí assigned on partition to another co-sharer unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be conveniently carried out.

Sír-land belonging to one sharer not to be included without his consent in the pattí of another sharer.

(*2*) If such land be so included, and after partition such co-sharer continue to cultivate it, he shall be recorded as an occupancy-tenant in respect of such land, and his rent shall be fixed by order of the Deputy Commissioner.

Act XVIII. of 1881.

136O. (*1*) Tanks, wells, water-courses, and embankments, shall be treated as attached to the land for the benefit of which they were originally made.

Rule as to tanks, wells, and other irrigation-works.

(*2*) Where, from the extent, situation, or construction of such works, it is found necessary that they should continue the joint property of the proprietors of two or more of the pattís into which the mahál may be divided, the Deputy Commissioner shall determine the extent to which the proprietors of each patti may make use of the said works, and the proportion of the charges for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works shall be divided.

136P. (*1*) Places of worship and burial-grounds held in common previous to the partition of a mahál shall continue to be so held unless the parties otherwise agree among themselves.

Rule regarding places of worship and burial-grounds.

(*2*) In such cases they shall state in writing the agreement into which they have entered, and such writing shall be filed with the record.

136Q. (*1*) If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Deputy Commissioner, the case may be dismissed.

Deputy Commissioner may dismiss case for non-payment of costs, or may quash proceedings.

(*2*) If, at any stage of the proceedings, there appears to be any reason for stopping the partition, the Deputy Commissioner may stay the partition, and order the proceedings to be quashed, recording his reasons for so doing.

136R. On completion of the partition, the Deputy Commissioner shall submit the proceedings to the Commissioner, who may either uphold the partition proposed, or modify it, or quash the proceedings; and a partition shall not take effect until it has been sanctioned by him.

Commissioner's sanction to partition necessary.

136S. (*1*) On a partition being sanctioned by the Commissioner, the Deputy Commissioner shall publish a notification of the fact at his office, and at some conspicuous place in the village or villages of the mahál of which the partitioned pattís formed part.

When partition sanctioned, notification to be published.

(*2*) The partition shall take effect from the first day of the agricultural year next after the date of such notification.

Perfect Partition.

136T. (*1*) Applications for perfect partition shall be made, in such form as may be prescribed by the Chief Commissioner, to the Settlement-officer charged with the settlement of the area in which the mahál is situate.

Applications for perfect partition to be made to Settlement-officer.

(*2*) Such applications must show that the share which it is desired to have formed into a separate mahál is already held in severalty, saving such portion of it as may be impartible. An application failing to show this shall be rejected.

136U. (*1*) Subject to any rules which may be made by the Chief Commissioner, the Settlement-officer, if he is satisfied of the truth of the matters stated in the application, may, if he thinks fit, declare the share to be a separate mahál, and may assess it separately to land-revenue:

Settlement-officer may declare shares in mahals to be separate mahals.

Provided that no share shall be declared to be a separate mahál till the proprietors of other shares in the mahál have been given an opportunity of objecting to its perfect partition. Act XVIII of 1881.

(2) Except with the sanction of the Commissioner, an incompact estate shall not be declared to be a separate mahál.

Supplemental Provisions.

Power to make rules regarding partition-proceedings.

136V. The Chief Commissioner may make rules regarding—

(*a*) the form in which applications for partition shall be made;

(*b*) the procedure to be followed in referring matters to arbitrators, and in giving effect to the award of arbitrators;

(*c*) the costs of partition, and the mode in which costs are to be apportioned; and,

(*d*) generally, for carrying out the provisions of this chapter.

136W. [*Repeal of Act XIX. of 1863.*] *Repealed by Act XII. of 1891, Sch. I.*

CHAPTER XI.

VILLAGE-OFFICERS AND PATWARIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension, and removal of lambardárs, sub-lambardárs "mukaddams, and patéls:"*

Provided that, except with the previous sanction of the Governor-General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard, among other matters, to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

The lambardár of the village shall ordinarily also be the mukaddam. When a lambardár who does not reside in the village is appointed mukaddam thereof, he shall, subject to the approval of the Deputy Commissioner, appoint an agent to perform the duties of a mukaddam. If there are resident co-sharers in the village, the non-resident lambardár shall appoint one of them to be his agent, unless the Deputy Commissioner for special reasons allows him to appoint some other person. If a mukaddam fails within a reasonable time to appoint an agent with the approval of the Deputy Commissioner, the Deputy Commissioner shall himself appoint an agent, and shall fix the amount of his remuneration, which shall be paid to him by the mukaddam.†

* In s. 137 the words quoted have been substituted for the original words by Act XVI. of 1889, s. 27 (*1*).

† In s. 137, the last four paragraphs have been substituted for the original paragraph by Act XVI. of 1889, s. 27 (*2*).

Act XVIII. of 1881.

An agent appointed under this section shall be deemed to have the powers conferred on, and to be responsible for the performance of the duties prescribed with regard to, mukaddams by this Act and the rules made hereunder.*

Any fine imposed on such agent for a breach of the provisions of this Act or the rules made hereunder may be recovered from the mukaddam whose agent he is by the Deputy Commissioner.*

In a raiyatwári village the patél shall ordinarily be the mukaddam.*

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue, as may under section 71, be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwáris, or village watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section 138, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás, paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section 64 as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

* In s. 137, the last four paragraphs have been substituted for the original paragraph by Act XVI. of 1889, s. 27 (2).

(*a*) to control and superintend the village-patwári and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties; Act XVIII. of 1881.

(*b*) to furnish reports regarding the estate of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests, and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*e*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers, and agents, and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers, or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Duties of patél.

143A.* It shall be the duty of every patél, in addition to his duties as mukaddam,—

(*a*) to collect and pay into the Government treasury the land-revenue assessed on the survey-numbers or holdings of his village;

* S. 143A has been inserted by Act XVI. of 1889, s. 28.

Act XVIII. of 1881.

(*b*) in respect of his village to report the abandonment of survey-numbers or holdings, the encroachment of raiyats on waste-land not included in their survey-numbers or holdings, and the non-payment of revenue, or any facts which indicate that default will be made in the payment thereof;

(*c*) to assist the patwári and village-watchman of his village in the recovery of dues to which they are entitled;

(*d*) to prevent the unauthorized cutting of wood in Government forests included in or adjoining his village, and to report any such unauthorised cutting in such forests.

Chief Commissioner may make rules as to patwáris.

144. The Chief Commissioner may make rules—

(*a*) providing for the appointment of patwáris in tracts where they have not been already appointed;*

(*b*) regulating the manner in which patwáris are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles, and the nature, mode, and amount of their remuneration;

(*c*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwári, when such persons are unable to act;

(*d*) prescribing the fines which may be imposed on patwáris and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

145. [*Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.*] *Repealed by Act XVI. of 1889, s. 30.*

Chief Commissioner may define duties of patwáris.

146. The Chief Commissioner may make rules prescribing the duties of patwáris—

(*a*) towards the Government; and may, in such rules, determine the registers, returns, or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community.†

Patwáris' papers to be public documents.

All records and papers which patwáris are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Power to fix amount to be paid by proprietors, tenants, and raiyats for patwáris.

146A.‡ (*1*) The Chief Commissioner shall fix the nature and amount of the contributions to be made by proprietors and tenants in every mahál or in any specified local area and by raiyats in every raiyatwári village towards the

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* Cl. *a* of s. 144 has been inserted by Act XVI. of 1889, s. 29; and the proviso to s. 144, being repealed by s. 29 of Act XVI. of 1889, has been omitted.

† In cl. *b*, s. 146, certain words, repealed by Act XVI. of 1889, s. 31, have here been omitted.

‡ S. 146A has been inserted by Act XVI. of 1889, s. 32.

remuneration of patwáris and the defraying of any charges incurred on account of the proper supervision, maintenance, and correction of the patwáris' records, and may direct that any or all of such contributions be paid into the Government treasury through the lambardár of the mahál or the patél:

Provided that, except with the previous sanction of the Governor-General in Council, no proprietor shall be compelled to contribute under this section a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is wholly or partially free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to a full assessment.

(*2*) The contributions fixed under sub-section (*1*) may be recovered in the same manner as an arrear of revenue payable directly to the Government, and the provisions of section 116 shall be applicable in the case of a lambardár or patél through whom the contributions are payable.

Patwáris to produce papers for inspection, and to allow copies to be made.

147. Patwáris shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

Power to make rules regarding village-watchmen.

147A.* The Chief Commissioner may make rules regarding village-watchmen, and may in the rules—

(*a*) provide for and regulate their appointment, suspension, or removal prescribing the number of village-watchmen who may hold office at one time in a single village, and providing for the appointment of a single village-watchman for two or more villages, where such villages would be unable to support separate village-watchmen;

(*b*) determine the character and amount of the remuneration which village-watchmen shall be entitled to demand from the members of the village-community;

(*c*) define the duties and the mode of supervision of village-watchmen.

Existing officers confirmed.

148. All existing lambardárs, sub-lambardárs, mukaddams, "patwáris, and village-watchmen,"† shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Lambardárs' and other officers' dues recoverable as arrears.

149. Any sums which lambardárs, sub-lambardárs, mukaddams, and "village watchmen,"‡ are entitled to recover or demand under this chapter, may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

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* S. 147A has been inserted by Act XVI. of 1889, s. 33.

† In s. 148 the words quoted have been substituted for the original by Act XVI. of 1889, s. 34.

‡ In s. 149 the words quoted have been substituted for the original by Act XVI. of 1889, s. 35.

Act XVIII. of 1881.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals, and quarries, and to all fisheries in navigable rivers,* shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights :

Right to mines and quarries.

Provided that, whenever, in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor-General in Council, the Chief Commissioner, or a Revenue or Settlement-officer, is, by this Act, empowered to determine or dispose of; and in particular,

Exclusive jurisdiction of Revenue-authorities.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters :—

Matters excepted from jurisdiction of Civil Courts.

(1) any matters provided for in sections 40, 41, 42, and 89, as to waste-lands :

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him :

(3) the amount of revenue or rate to be assessed on any mahál, share, or portion of a mahál under this or any other Act for the time being in force :

(4) questions as to the validity of any engagement with Government for the payment of land-revenue or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement :

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner :

(6) the amount of the allowance or rent fixed under section 61 or 62.

(7) the re-distribution, according to established custom, by a Settlement-officer, of land comprised in a mahál :

(8) the formation of the record-of-rights,

the preparation, signing, or attestation of any of the documents contained therein, or

the notification of settlement;

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* In s. 151, certain words, repealed by Act XVI. of 1889, s. 36, have here been omitted.

(9) any matters provided for or referred to in section 73, 74, or 130 as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land: Act XVIII. of 1881.

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections 120, 121, and 122;

(13) questions connected with, or arising out of, the exclusion of a proprietor from forest-land, and the direct management of such land under section 124A;*

(13*a*) the distribution of the land or allotment of the revenue of a mahál by partition; or the determination of the rent to be paid by a co-sharer for land held by him after the partition in the mahál or the pattí of another co-sharer.*

(14) claims to the office of patwárí, lambardár, sub-lambardár, "mukaddam, patél, or village-watchman,"† or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement-officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

For what village-cesses suit lies.

158. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section 132, clause (*h*).

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Restriction on Revenue and Settlement-officers trading and holding land.

155. No Revenue or Settlement-officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

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* Cls. 13 and 13*a* have been substituted for the original cl. 13 by Act XVI. of 1889, s. 37.

† In cl. 14 the words quoted have been substituted for the original by Act XVI. of 1889, s. 38.

Act XVIII. of 1881.

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of divisions or to Deputy Commissioners, the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1882.*

When mahál managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

156. When any mahál is managed or let in farm under section 57 or 58 or when either of the proclamations mentioned in sections 98 and 103 has been made, all sums due to the proprietor in respect of the mahál, share, or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent, or lessee.

Payment to proprietor in anticipation of due date.

Recovery of balances due by farmers.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of revenue due when Act comes into force; and of money payable under Act.

158. All land-revenue due when this Act comes into force and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due, and from the sureties (if any) of such persons, as if such land-revenue, penalties, or moneys were an arrear of revenue, payable directly to Government, due under this Act by such persons and their sureties.

Past proceedings for collection of revenue legalized.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears there of shall be deemed to have been taken in accordance with law.

Chief Commissioner may empower persons by name or confer powers on classes.

160. In conferring powers under this Act, the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may vary or cancel orders.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Penalty for failure to perform duty or abuse of authority by mukaddam or agent.

161A.† Any mukaddam, or agent of a mukaddam, who, without reasonable excuse, fails to perform any duty imposed on him by this Act or the rules made thereunder, or abuses any of the powers conferred upon him by this

* In s. 155 the reference to the Indian Companies Act, 1866, has been altered in accordance with Act VI. of 1882, s. 2.

† Ss. 161A and 161B have been inserted by Act XVI. of 1889, s. 39.

Act or any such rule, shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing failure, to a fine of ten rupees for each day during which the failure continues. Act XIX. of 1881.

161B * Any person who neglects or disobeys a reasonable order made by a mukaddam or agent of a mukaddam in pursuance of the duty imposed upon him by s. 141, clause (*e*), shall be punishable with fine which may extend to twenty rupees, and, if the neglect or disobedience is continued, shall also be liable to a fine of five rupees for each day during which the neglect or disobedience is continued.

Penalty for neglecting or disobeying orders of mukaddam or agent.

162. The Chief Commissioner may, with the previous sanction of the Governor-General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor-General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by Act XII. of 1891, Sch. I.*]

ACT XIX. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 31ST AUGUST 1881.

An Act to amend the Law relating to Forests, Forest-produce, and the Duty leviable on Timber in Lower Burma.†

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in Lower Burma†; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881:"

Short title.

* S. 161B has been inserted by Act XVI. of 1889, s. 39.

† The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation dated Sep. 25, 1886, *Gazette of India*, 25th idem, Pt. I., p. 539.

Act XIX. of 1881.

Local extent.

It extends to all the territories for the time being administered by the Chief Commissioner of Lower Burma;* provided that the Chief Commissioner may, by notification in the official Gazette, exempt any place from its operation, but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced in such place before such exemption; and

Commencement.

it shall come into force on such day as the Chief Commissioner may, by notification in the official Gazette, direct.†

2. [*Repeal of enactments.*] *Repealed by Act XII. of 1891, Sch. I.*

Interpretation-clause.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,—

"Forest-officer."

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Governor-General in Council or the Chief Commissioner to be—

Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest-rangers, Foresters, or Forest-guards, or to discharge any function of a Forest-officer under this Act or any rule made hereunder:

"tree:"

"tree" includes palms, bamboos, stumps, brushwood, and canes: ‡

"timber:"

"timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not:

"forest-produce:"

"forest-produce" includes—

(*a*) the following, whether found in, or brought from, a forest or not, that is to say:—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, and myrabolams, and

(*b*) the following, when found in, or brought from, a forest, that is to say:—

(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including grass, creepers, reeds, and moss), and all parts or produce of such plants,

(*iii*) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(*iv*) peat, surface-soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries): §

"forest-offence:"

"forest-offence" means an offence punishable under this Act or any rule made hereunder:

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* The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation dated Sep 25, 1886, *Gazette of India*, 25th idem, Pt. I., p. 539.

† The Act came into force on July 1, 1882.—See *Burma Gazette*, March 25, 1882, Pt. I., p. 125.

‡ This definition of "tree" has been substituted by Act V. of 1890, s. 15 (*1*).

§ This definition of "forest-produce" has been substituted for the original by Act V. of 1890, s. 15 (*2*).

"cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids:

"cattle:"

"river:" "river" includes also streams, canals, creeks, and other channels, natural or artificial:

"land at the disposal of Government:" "land at the disposal of Government" means

(*a*) land in respect of which no person has acquired the status of a land-holder under section 7 of the Burma Land and Revenue Act, 1876,

(*b*) land in respect of which no person has acquired any right created by grant or lease made by, or on behalf of, the British Government:

"Magistrate" means a Magistrate of the first or second class, and includes a Magistrate of the third class when he is specially empowered by the Chief Commissioner to try forest-offences.

"Magistrate."

4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another person or to the Government, or anything growing in, or attached to, or subsisting upon, the land of another person or of the Government.

Saving of rights of profit from the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

5. The Chief Commissioner may constitute any land at the disposal of Government a reserved forest in manner hereinafter provided.

Power to reserve forests.

6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner shall publish a notification in the official Gazette—

Notification by Chief Commissioner.

(*a*) specifying as nearly as possible the situation and limits of such land;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature, and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, and any claims relating to the practice within such limits of toungya cultivation, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person other than a Forest-officer; but a Forest-officer may be appointed by the Chief Commissioner to assist the Forest-Settlement-officer in the inquiry prescribed by this chapter.

7. When a notification has been published under section 6, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation—

Proclamation by Forest-Settlement-officer.

Act XIX. of 1881.

(*a*) specifying as nearly as possible the situation and limits of the proposed forest;

(*b*) setting forth the substance of the provisions of section 8;

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the preservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in section 6 either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right or claim.

Bar of accrual of forest-rights.

8. During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right, or power to create the same, was vested when the proclamation was published; and, on such land, no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made, and no trees shall be cut for the purpose of trade or manufacture, except as hereinafter provided.

Prohibition of building, clearing, &c.

Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings lawfully made for toungya cultivation by persons in the habit of practising such cultivation on such land.

Inquiry by Forest-Settlement-officer.

9. The Forest-Settlement-officer shall take down in writing all statements made under section 7, and shall inquire into all claims made under that section, and the existence of any right or practice mentioned in section 6 in respect of which no claim is made. The Forest-Settlement-officer shall, at the same time, consider and record any objection which the Forest-officer (if any), appointed under section 6 to assist him, may make to any such claim or to the existence of any such right or practice.

Powers of Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

(*a*) the powers of a demarcation-officer under the Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure* for compelling the attendance of witnesses and the production of documents.

Claims relating to practice of toungya cultivation how dealt with.

11. In the case of a claim relating to the practice of toungya cultivation, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim, and permitting, or refusing to permit, such practice wholly or in part.

If such practice is permitted wholly or in part, the Forest-Settlement-officer may—

* See Act XIV. of 1882, s. 3, and Ch. XIV.

(*a*) alter the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants; or Act XIX. of 1881.

(*b*) cause certain portions of the reserved forest to be separately demarcated, and give permission to the claimants to practice toungya cultivation under such rules and conditions as he may prescribe.

No right to practice toungya cultivation shall be deemed to be conferred by an order under this section permitting such practice, and, except with the sanction of the Chief Commissioner, such cultivation shall only be practised by the person to whom such permission is granted.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following rights:—

(*a*) a right of way,

(*b*) a right to a water-course, and to use of water,

(*c*) a right of pasture, or to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim, and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; or (2) exclude the land from the limits of the proposed forest; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of way, water-course, pasture, and to forest-produce.

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*), and (*c*) of section 12, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim, and admitting or rejecting the same wholly or in part.

When a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or buildings, he shall record the designation, position, and area of such land, and the designation and position of such buildings.

Where the right is a right to forest-produce, he shall also record whether the forest-produce obtained by the exercise of such right may be sold or bartered, and such other particulars as may be necessary in order to define the nature, incidents, and extent of the right.

Provision for rights of pasture or to forest-produce admitted.

14. When the Forest-Settlement-officer has admitted wholly or in part, and recorded under section 13, a claim to a right of pasture or to forest-produce, he shall, as far as possible, provide for the exercise of such right—

Act XIX of 1881.

(*a*) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimant;

(*b*) by recording an order continuing to the claimant a right of pasture or to forest-produce (as the case may be), subject to such rules as may be prescribed by the Chief Commissioner.

The order passed under clause (*b*) shall record, as far as practicable, the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the seasons during which, such pasture is permitted; or

the quantity of timber or other forest-produce which the claimant is authorized to take or receive, the local limits within which, the season during which, and the mode in which, the taking of such produce is permitted; and

such other particulars as may be required in order to define the extent of the right which is continued, and the mode in which it may be exercised.

Commutation of such rights.

15. Whenever any right of pasture or to forest-produce admitted under section 13 is not provided for in one of the ways prescribed in section 14, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of land, or in such other manner as such officer thinks fit.

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Appeal from order passed under foregoing sections.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section 11, 12, 13, 14, or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may, by notification in the official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Appeal under section 16.

17. Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Hearing of appeals.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final, except as hereinafter provided.

Notification declaring forest reserved.

18. When the following events have occurred (namely):—

(*a*) the period fixed under section 7 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer, and

(*b*) if such claims have been made, the period fixed by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer, and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section 12, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section 16 of that Act, Act XIX. of 1881.

the Chief Commissioner may publish a notification in the official Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Extinction of rights not claimed.

19. Rights in respect of which no claim has been preferred under section 7, and of the existence of which no knowledge has been acquired by enquiry under section 9, shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 7.

Publication of translation of such notification in neighbourhood of forest.

20. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under section 7.

Power to revise arrangement made under section 11, 14, or 17.

21. The Chief Commissioner may, within five years from the publication of any notification under section 18, revise any arrangement made under section 11, 14, or 17, and may rescind or modify any order made under this chapter, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the permission granted under section 11, or rights admitted under section 13, be commuted under section 15.

No right acquired over reserved forest except as here provided.

22. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right, or the power to create such right, was vested when the notification under section 18 was published.

Rights not to be alienated without sanction.

23. Notwithstanding anything herein contained, no right continued under section 14 shall be alienated by way of grant, sale, lease, mortgage, or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is continued for the beneficial enjoyment of any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

No timber or other forest-produce obtained in exercise of any right so continued shall be sold or bartered except to the extent defined by the order recorded under section 14.

Power to stop ways and water-courses in reserved forest.

24. Any Forest-officer may, from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest; provided that, for the way or water-course so stopped, another way or water-

Act XIX. of 1881. course which, in the opinion of the Chief Commissioner, is equally convenient, already exists, or has been provided or constructed by such Forest-officer.

Penalties for trespass or damage in reserved forests.

25. Any person who in a reserved forest—

(*a*) trespasses, or pastures cattle, or permits cattle to trespass,

(*b*) causes any damage by negligence in felling any tree, or cutting or dragging any timber,

(*c*) strips off the bark or leaves from or otherwise damages any tree,

(*d*) in contravention of any rules made by the Chief Commissioner, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees, to double the amount of such damage.

Acts prohibited in such forests.

26. Any person who—

(*a*) makes any fresh clearing prohibited by section 8, or

(*b*) sets fire to a reserved forest, or, in contravention of any rules made by the Chief Commissioner, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest,*

or who, in a reserved forest,

(*c*) kindles, keeps, or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered in this behalf may from time to time notify,

(*d*) fells, girdles, lops, taps, or burns any tree,

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce,

(*f*) clears or breaks up any land for cultivation or any other purpose,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Acts excepted from prohibition contained in sections 25 and 26.

27. Nothing in section 25 or section 26 shall be deemed to prohibit (*a*) any act done in accordance with any rule made by the Chief Commissioner, or with the permission in writing of a Forest officer specially empowered to grant such permission; or (*b*) any practice of *toungya* cultivation permitted under section 11; or (*c*) the exercise of any right continued under section 14, or created by grant or contract in the manner described in section 22.

Penalty for offences committed by persons having rights in reserved forests.

28. Whenever fire is caused wilfully or by gross negligence in a reserved forest by any person having rights in such forest, or having permission to practise *toungya* cultivation therein, or by any person in his employment, or whenever any person having rights in such forest contravenes the provisions of section 23, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section 26 in respect of such fire) direct that in such forest or any specified portion thereof the exercise of all or any of the rights of pasture or to forest-produce shall be extinguished or suspended for such period

* Cl. *b* of s. 26 has been substituted for the original by Act V. of 1890, s. 16.

as he thinks fit, and may withdraw any permission to practise *toungya* cultivation in such forest or portion. Act XIX. of 1881.

Power to declare forest no longer reserved.

29. The Chief Commissioner may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Forests reserved under former rules.

30 Any forest which has been declared a reserved forest under any rules in force previous to the day on which this Act comes into force shall be deemed to have been reserved hereunder;

and all questions decided, orders issued, and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued, and prepared hereunder, and all provisions of this Act relating to reserved forests shall apply to such forest.

CHAPTER III.

OF VILLAGE-FORESTS.

Constitution of village-forests.

31. The Chief Commissioner may by notification in the official Gazette constitute any land at the disposal of Government a village-forest for the benefit of any village-community or group of village-communities, and may, in like manner, vary or cancel any such notification.

Every such notification shall specify the limits of such village-forest.

Teak trees in village-forest the property of Government.

32. All teak trees in a village-forest shall be deemed to be the property of Government; and no person shall cut, mark, lop, girdle, or injure by fire or otherwise, any such trees without the permission in writing of a Forest-officer specially empowered to grant such permission.

Power to make rules for village-forests.

33. The Chief Commissioner may make rules* for regulating the management of village-forests, prescribing the conditions under which the community or group of communities for the benefit of which any such forest is contituted may be provided with timber or other forest-produce or with pasture, and their duties in respect of the protection and improvement of such forest.

The Chief Commissioner may, by such rules, declare any of the provisions of Chapter II. of this Act to be applicable to village-forests.

Saving of private rights.

34. Nothing in this chapter shall be deemed to affect any existing rights of any person in or over any village-forest.

* As to rules under this Act, see foot-note to s. 75.

Act XIX. of 1881.

Power to inquire into, and deal with, such rights.

The Chief Commissioner may in any case direct that all claims to any such rights, other than the rights of the village-community or group of village-communities for the benefit of which such village-forest is constituted, shall be inquired into, recorded, and provided for in the manner prescribed by Chapter II. of this Act.

CHAPTER IV.

OF THE PROTECTION OF CERTAIN TREES AND NATURAL PRODUCE.

Reserved trees.

35. All teak trees standing on any land not included in a reserved or village-forest shall be deemed to be the property of Government, and shall be reserved trees.

The Chief Commissioner may, by notification in the official Gazette,—

(*a*) declare that any other trees or any specified class of other trees standing on any land at the disposal of Government shall, from a date to be fixed by such notification, be reserved trees;

(*b*) vary or cancel any such notification;

(*c*) declare that any teak trees standing on land other than land at the disposal of Government shall, from a date to be fixed by such notification, cease to be the property of Government, and to be reserved trees.

Protection of reserved trees.

36. No person shall cut, mark, lop, girdle, tap, or injure by fire or otherwise, any reserved tree, except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered to grant such permission.

Whoever cuts, marks, lops, girdles, taps, or injures by fire or otherwise any reserved tree in contravention of this section shall be punished with fine which may extend to twenty rupees, or, when the damage resulting from his offence amounts to more than ten rupees, to double the amount of such damage.

Power to make rules generally.

37. No person shall make use of the pasturage or of the natural produce of any land at the disposal of Government, and not included in a reserved or village-forest, except in accordance with rules* which may be prescribed by the Chief Commissioner. Such rules may, with respect to such land,—

(*a*) regulate or prohibit the cutting of toungyas or the issue of grants or leases by Government with respect to land on which teak trees are growing;

(*b*) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*c*) regulate or prohibit the cutting, sawing, conversion, and removal of trees and timber, and the collection and removal of natural produce;

(*d*) regulate or prohibit the quarrying of stone, the boiling of cutch, or the burning of lime or charcoal;

(*e*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such cutting or pasturing;

(*f*) regulate or prohibit hunting, shooting, fishing, poisoning water, and setting traps or snares;

* As to rules under this Act, see foot-note to s. 75.

(*g*) regulate the sale or free grant of timber or other natural produce; and Act XIX. of 1881.

(*h*) prescribe, or authorize any Forest-officer to prescribe, subject to the control of the Chief Commissioner, the fees, royalties, or other payments for such timber or other natural produce, and the manner in which such fees, royalties, or other payments shall be levied, whether in transit, or partly in transit, or otherwise.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for acts in contravention of rules.

The Chief Commissioner may exempt any person or class of persons or any local area from the operation of any such rule, and may cancel such exemption.

38. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered to grant such permission, or in the exercise of any right.

Nothing in this chapter to prohibit acts done in certain cases.

CHAPTER V.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.*

39. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates, as he may prescribe by notification in the official Gazette, on all timber "or other forest-produce"† which is brought into British Burma from any place beyond the frontier of British Burma.

Power to impose duty on timber "or other forest produce."†

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, by like notification, fix the value on which such duty shall be assessed.

Power to fix value for *ad-valorem* duty.

40. On all teak timber cut within the limits of the Attaran Forest, and floated down the Attaran river, duty shall be levied at the following rates, that is to say:—

Duty on certain timber floated down the Attaran.

	Rs.	As.	P.	
On logs above five feet in girth	4	0	0	per log.
Ditto below ,, ,, ...	2	0	0	,,
On stem pieces	0	9	0	per piece.
On ship crooks	0	4	0	per crook.

These rates shall not apply to timber for which special rates have been fixed by any agreement entered into with Government.

Power to exempt timber "or other forest-produce"† from duty.

41. The Chief Commissioner may exempt any timber "or other forest-produce"† from the duty to which it is liable under section 39 or section 40, and revoke such exemption.

Provisions of chapter not to limit purchase-money or royalty.

42. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber "or other forest-produce."†

* This heading has been substituted for the original by Act V. of 1890, s. 17 (*1*).

† In ss. 39, 41, and 42, the words quoted have been inserted by Act V. of 1890, s. 17 (*2*).

Act XIX. of 1881.

CHAPTER VI.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.*

Power to make rules to regulate transit of timber "or other forest-produce."‡

43. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may make rules† to regulate the transit of all timber "or other forest-produce."‡

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber "or other forest-produce"‡ may be imported into, exported from, or moved within, British Burma;

(*b*) prohibit the import and export or moving of such timber "or other forest-produce"‡ without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production, and return of such passes;

(*d*) fix, or authorize any Forest-officer to fix, subject to the control of the Chief Commissioner, the fees payable for such passes;

(*e*) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening or the setting adrift of such timber by any person not the owner thereof, or not acting on behalf of such owner or of the Government;

(*f*) provide for the stoppage, reporting, examination, and marking of timber "or other forest-produce"‡ in transit in respect of which there is reason to believe that any money is payable to Government, or to which it is desirable, for the purposes of this Act, to affix a mark;

(*g*) establish, or authorize any Forest-officer to establish, subject to the control of the Chief Commissioner, stations to which such timber "or other forest-produce"‡ shall be taken by those in charge of it for examination, or for the realization of such money, or in order that such mark may be affixed to it; and the conditions under which such timber "or other forest-produce"‡ shall be brought to, stored at, and removed from, such stations;§

(*h*) provide for the management and control of such stations, and for regulating the appointment and duties of persons employed thereat;

(*i*) authorize the transport of timber the property of Government across any land, and regulate the compensation to be paid for any damage done by the transport of such timber;

(*j*) prohibit the closing up or obstruction of the channel or banks of any river used for the transit of timber "or other forest-produce"‡ and the throwing of grass, brushwood, branches, and leaves into any such river, or any other act which tends to cause the obstruction of such channel;

(*k*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal from the person, or by the sale of any timber "or other forest-produce"‡ causing such obstruction;

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* This heading has been substituted for the original by Act V. of 1890, s. 17 (*1*).

† As to rules under this Act, see foot-note to s. 75.

‡ In s. 43 the words quoted have been inserted by Act V. of 1890, s. 17 (*3*).

§ In cl. *g* this word has been substituted by Act XII. of 1891, Sch. II., for the word "station."

(*l*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking, or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber; Act XIX. of 1881.

(*m*) regulate the use of property-marks for timber and the registration of such marks; declare the circumstances in which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

The Chief Commissioner may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce, or to any specified local area.*

Penalties for breach of rules made under section 43.

44. The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.

All persons bound to aid in case of accident at station.

45 In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger, and securing such property from damage or loss.

CHAPTER VII.

OF THE COLLECTION OF DRIFT, STRANDED, AND OTHER TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved.

46. All timber found adrift, beached, stranded, or sunk,

all timber bearing marks which have not been registered under rules made under section 43,

all timber which has been supermarked, or on which the marks have been obliterated, altered, or defaced by fire or otherwise, and

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Power to collect the same.

Such timber may be collected by any Forest-officer or other person entitled to collect the same, and may be brought to such stations as a Forest-officer specially empowered in this behalf may, from time to time, notify as stations for the reception of drift-timber.

* This paragraph in s. 43 has been added by Act V. of 1890, s. 17, (*4*).

Act XIX. of 1881. The Chief Commissioner may, by notification in the official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

47. Public notice shall from time to time, as occasion may require, be given by a Forest-officer specially empowered in this behalf of timber collected under section 46. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Procedure on claim preferred to such timber.

48. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court, and retain the timber pending the receipt of an order from such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, "within three months"* from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation against the Government or against any Forest-officer on account of such rejection or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

Disposal of unclaimed timber.

49. If no statement is presented in the manner and within the period prescribed by the notice issued under section 47, or, where such statement having been so presented, and the claim having been rejected, the claimant omits to institute a suit to recover possession of such timber within the further period mentioned in section 48, the ownership of such timber shall vest in the Government free from all incumbrances; or, when such timber has been delivered to another person under section 48, in such other person, free from all incumbrances not created by him.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer, or other person entitled to receive it, such sum on account thereof as may be due for salving, collecting, moving, storing, and disposing of the same.

Power to make rules and prescribe penalties.

51. The Chief Commissioner may make rules† to regulate the following matters (namely):—

(*a*) the salving, collection, and disposal of all timber mentioned in section 46;

(*b*) the use and registration of boats used in salving and collecting timber;

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* In s. 48 the words quoted have been substituted for the words, "within two months," by Act V. of 1890, s. 18.

† As to rules under this Act, see foot-note to s. 75.

(*c*) the amount to be paid for salving, collecting, moving, storing, and disposing of such timber; and Act XIX of 1881.

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

52. When there is reason to believe that a forest offence has been committed in respect of any timber or forest-produce, such timber or produce, together with all tools, boats, carts, and cattle used in committing any such offence may be seized by any Forest-officer or Police-officer.

Report to Magistrate.

Every officer seizing any property under this section shall place on such property, or the receptacle (if any) in which it is contained, a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the timber or forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

53. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

Timber, forest-produce, tools, &c., when liable to confiscation.

54. When any person is convicted of a forest-offence, all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts, and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

55. When the trial of any forest-offence is concluded, any timber or forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken possession of by a Forest-officer specially empowered in this behalf; and in any other case may be disposed of in such manner as the Court may order.

Procedure when offender not known or cannot be found.

56. When the offender is not known or cannot be found, the Magistrate enquiring into the offence, if he finds that an offence has been committed, may, on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by

Act XIX of 1881.

a Forest-officer specially empowered in this behalf, or to be made over to such Forest-officer or other person as the Magistrate considers entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate shall either cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or shall publish such notice in any way which he thinks fit.

Procedure as to perishable property seized under section 52.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under secton 52 and subject to speedy and natural decay, and may deal with the proceeds as he might have dealt with such property if it had not been sold.

Appeal from orders under sections 54, 55, and 56.

58. Any person claiming to be interested in property seized under section 52 may, within one month from the date of any order passed under section 54, section 55, or section 56, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

59. When an order for the confiscation of any property has been passed under section 54 or 56, and the period limited by section 58 for presenting an appeal from such order has elapsed, and no such appeal has been presented, or when, on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or portion, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section 52 and the withdrawal of any charge made in respect of such property.

Punishment for wrongful seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Any fine so imposed, or any portion thereof, shall, if the convicting Magistrate so direct, be given as compensation to the person aggrieved by such seizure.

Penalty for counterfeiting or defacing marks in trees and timber, and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,—

(*a*) knowingly counterfeits, upon any timber or standing tree, a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(*b*) unlawfully affixes, to any timber or standing tree, a mark used by Forest-officers, or Act XIX of 1881.

(*c*) alters, defaces, or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest-officer, or

(*d*) alters, moves, destroys, or defaces any boundary-mark of any forest or waste-land to which any provisions of this Act apply,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63 Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case, " or to the officer in charge of the nearest police-station."*

Power to prevent commission of offence.

64. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Operation of other laws not barred.

65. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest-offence, or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made hereunder :

Provided that no person shall be punished twice for the same offence.

Power to compound offences.

66 † (*1*) The Chief-Commissioner may, from time to time, by notification in the official Gazette, empower a Forest-officer by name, or as holding an office,—

(*a*) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(*2*) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(*3*) A Forest-officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of

* In s. 63 the words quoted have been added by Act V. of 1890, s. 19.

† S 66 has been substituted for the original by Act V. of 1890, s. 20.

Act XIX. of 1881.

money accepted as compensation under sub section (*f*), clause (*a*), shall in no case exceed the sum of fifty rupees.

Presumption that timber or forest-produce belongs to Government.

67. When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any timber or forest-produce is the property of the Government, such timber or produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER IX.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

68. Cattle trespassing in a reserved forest or in a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Power to alter fines fixed by that Act.

99. The Chief Commissioner may, by notification in the official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied, for each head of cattle impounded under section 68 of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

	Rs.	A.
For each elephant	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat, or kid	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Chief Commissioner may invest Forest-officers with certain powers.

70. The Chief Commissioner may invest any Forest officer by name, or as holding an office, with the following powers (that is to say):—

(*a*) the powers of a demarcation-officer under the Burma Boundaries Act, 1880;*

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure, 1882;†

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence;

(*e*) power to notify seasons and manner in which fire may be kindled, kept, or carried in a reserved forest;

* See *supra*, p. 43.
† Now Act X. of 1882.—See s. 3 of the Act.

(*f*) power to grant any permission referred to in section 26, 32, 36, or 38 ; Act XIX. of 1881.

(*g*) power to notify stations for the reception of drift-timber ;

(*h*) power to give public notice of timber collected under section 46 ;

(*i*) power to take possession of property under this Act ;

(*j*) power to direct the release of property or withdrawal of charges ;

(*k*) *Repealed by Act V. of 1890, s. 21.*]

and may withdraw any powers so conferred.

Any evidence recorded under clause (*l*) of this section shall be admissible in any subsequent trial before a Magistrate of the alleged offender :

Provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 355, section 356, or section 357 of the Code of Criminal Procedure, 1882.*

Forest officers deemed public servants.

71. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

72 No suit or criminal prosecution shall lie against any public servant for anything done or omitted by him in good faith under this Act.

Forest-officers not to trade.

73. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or forest-produce, or be or become interested in any lease or mortgage of any forest, or in any contract for working any forest, whether in British or foreign territory.

CHAPTER XI.

MISCELLANEOUS.

Additional powers to make rules.

74. The Chief Commissioner may make rules consistent with this Act—

(*a*) to declare by what Forest-officer or class of Forest-officers the powers or duties conferred or imposed by or under this Act on a Forest-officer shall be exercised or performed ;

(*b*) to regulate the procedure of Forest-Settlement-officers ;

(*c*) to regulate the rewards to be paid to officers and informers from the proceeds of fines and confiscations under this Act or from the Public Treasury ; and

(*d*) generally to carry out the provisions of this Act.

Rules when to have force of law.

75. All rules made by the Chief Commissioner under this Act shall be published in the official Gazette, and shall thereupon have the force of law.†

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* These sections of the new Code have been substituted for ss. 333-335 of the Code of 1872.—See Act X. of 1882, s. 3.

† For rules under this Act applying to Lower Burma (except the Assam Commissionership), see *Burma Gazette*, Jan. 13, 1883, Pt. I., p. 13; and for amendments of the same, see *Burma Gazettes* July 5, 1884, Pt. I., p. 182; Aug. 2, 1884, Pt. I., p. 211; Nov. 29, 1884, Pt. I., p. 291; March 4, 1885, Pt. I., p. 92; May 9, 1885, Pt. I., p. 174; Nov. 13, 1886, Pt. I., p. 343; Sep. 10, 1887, Pt. I., p. 304; Oct. 8, 1887, Pt. I., p. 393; Nov. 19, 1887, Pt. I., p. 447; Sep. 15, 1888, Pt. I., p. 410; and Jan. 26, 1889, Pt. I., p. 44.

Act XIX. of 1881.

Powers of Chief Commissioner exercisable from time to time.

All powers conferred by this Act on the Chief Commissioner may be exercised from time to time as occasion requires.

Persons bound to assist Forest-officer and Police-officer.

76. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber, or to pasture cattle, or to practise toungya cultivation in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish, without unnecessary delay, to the nearest Forest-officer or Police-officer, any information he may possess respecting the occurrence of a fire in or near such forest, or the commission of, or intention to commit, any forest-offence; and shall assist any Forest-officer or Police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Recovery of money due to Government.

77. All money, other than fines, payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any timber or forest-produce, or of expenses incurred in the execution of this Act in respect of such timber or forest-produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

78. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce; and such produce may be taken possession of by a Forest-officer specially empowered in this behalf, and may be retained by him until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

Government and its officers not liable for loss or damage in respect of certain timber.

79. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule made under section 43 or while detained elsewhere for the purposes of this Act, or in respect of any timber collected under section 44; and no Forest-officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously, or fraudulently.

80. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section 4.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

81.* When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

[*Repealed by Act XII. of 1891. Sch. I.*]

ACT XX. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH SEPTEMBER 1881.

An Act to amend the law providing for the relief of Jágirdárs and Zamindárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágirdárs and Zamindárs in Sindh; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881;" and it shall come into force on the passing thereof.

Short title.
Commencement.

2. Act No. XIV. of 1876 (*to relieve from Incumbrances the Estates of Jágirdárs and Zamindárs in Sindh*) is repealed; but all applications, appointments, and rules made, all notices published, and all other things duly done under the said Act shall be deemed to have been respectively made, published, and done under this Act.

Repeal of Act No. XIV. of 1876

3. In this Act—

Interpretation-clause.

"Jágir land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants:

"Jágir land:"

* S. 81 has been added by Act V. of 1890, s. 22.

Act XX. of 1881.

"Jágirdár:" "Jágirdár" means a person who, or whose ancestor, was found in possession of jágir land in Sindh on the seventeenth day of February 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued, by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance:

"Zamindár:" "Zamindár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land revenue for any one of the five revenue years next before the fourteenth day of September 1876, a sum not less than three hundred rupees; "and a person holding lands in Sindh which having been comprised in the jágir lands of a jágirdár, and having ceased to be jágir lands, are assessed by the Government on account of land-revenue at a sum not less than three hundred rupees per year, and, where a joint-family or any other body of co-sharers holds lands of either of those descriptions, each member of that family or body who would be entitled to demand a partition of the lands:"*

"Commissioner:" "Commissioner" means the Commissioner in Sindh.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

Application for the benefit of this Act.

4 At any time within six months after the passing of this Act, any jágirdár or zamindár,

or any person who would be sole heir or one of the heirs to such jágirdár or zamindár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágirdár or zamindár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágirdár, zamindár, or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

5. When any such application is made by or on behalf of a jágirdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may, from time to time, be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

* The words quoted in the definition of "Zamindár" have been added by Act XI. of 1884, s. 2.

5A* When the Commissioner has directed an inquiry under section 5, he may, if he thinks fit, further direct that, until he dismisses the application, or appoints an officer under section 7,— Act XX. of 1881.

Interim order of protection.

(*a*) all proceedings then pending in any Civil Court or Revenue Court or Office in British India in respect of any of the debts and liabilities to which the debtor is subject, or which are charged on the whole or any part of his immoveable property, shall be stayed, and the operation of all processes, executions, and attachments then in force for or in respect of such debts and liabilities, shall be suspended; and

(*b*) no fresh proceedings, processes, executions, or attachments, shall be instituted in or issued by any Civil Court or Revenue Court or Office in British India in respect of such debts and liabilities.

6 When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer, subject to his control, may require.

Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner.

Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may (*a*) direct a further inquiry; or (*b*) dismiss the application; or (*c*), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8 Such order (hereinafter called "the order of management") shall extend to all immoveable property, "including any interest in joint immoveable property," † of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

"Order of management;" to what it extends.

* S. 5A has been inserted by Act XI. of 1884, s. 3.

† In s. 8 the words quoted have been inserted by Act XI. of 1884, s. 4.

Act XX. of 1881.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue :—

Stay of pending proceedings, &c.

First, all proceedings then pending in any Civil Court "or Revenue Court or Office"* in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions, and attachments then in force for, or in respect of, such debts and liabilities shall be suspended;

Bar of fresh proceedings.

Secondly, so long as the management continues, no fresh proceedings, processes, executions, or attachments shall be instituted in or issued by any Civil Court "or Revenue Court or Office"* in British India in respect of such debts and liabilities;

The debtor incompetent—

Thirdly, so long as the management continues, the debtor shall be incompetent—

to contract debts,

(*a*) to enter into any contract involving him in pecuniary liability, or

to encumber or alienate property under management,

(*b*) to mortgage, charge, lease, or alienate the property under management or any part thereof, or

to grant receipts for rent thereof,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease, or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have

Manager to have powers of owner, and to receive rents and profits,

all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

to have powers of a Collector for their recovery.

and for the purpose of recovering such rents and profits shall have in addition to any powers possessed by a jágírdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government :

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management or any part thereof, for any term exceeding two years, to take effect in possession.

Manager to pay therefrom—

11. From the sums received or recovered under section 10, the manager shall pay—

costs of management and repairs,

First, the costs of the management, including the costs of necessary repairs;

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* In s. 9 the words quoted have been inserted by Act XI. of 1884, s. 5.

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Government revenue, &c.,

Thirdly, the rent (if any) due to the jágirdár or other superior holder in respect of the said property;

rent due to superior holder,

Fourthly, such periodical allowances as the Commissioner may, from time to time, fix for the maintenance of the debtor and his family;

allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8 other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhí, calling upon all persons having claims against the debtor or the property under management, to notify the same in writing to such manager within six months from the date of the publication.

Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the mukhtiárkárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit.

Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in

Claim not duly notified to be barred.

Act XX. of 1881. section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provision for admission of claims within further period of six months.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may—

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. At any time before he has sanctioned a liquidation scheme under section 18, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that, on a date fixed by such order, the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him; and

(*d*) the proceedings, processes, executions, and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions, and attachments stayed or suspended under section 9 shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV. of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV. of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the

Act XX. of 1881. property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the Local Government.

Separation of part of jágir land subject to lapse.

24A.* When jágir land under management is held on this condition, that on the happening of a certain event a share of the land shall lapse, but that it shall be in the discretion of the person then entitled as jágirdar to divide off and relinquish in respect of the lapse such part of the land, being a fair equivalent of that share, as he thinks fit, the manager may, if he deems it convenient for the better exercise of the powers conferred by sections 23 and 24, at any time, after such consultation with persons interested as he thinks necessary, allot by written order, for relinquishment on the happening of the event, such part of the land as he thinks fit; and thereupon that part and no other shall, on the happening of the event, be relinquished.

Manager's receipt to be a discharge.

25. The manager's receipt for any moneys, rents, or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section 24, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23, and 24.

Death of debtor during management.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

* S. 24A has been inserted by Act XI. of 1884, s. 6.

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9; and

3rdly, no Civil Court "or Revenue Court or Office"* in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, &c., made by restored jágirdár valid only for his life.

28. When a jágirdár or zamindár has been restored under section 26 to the possession of any property, no mortgage, charge, lease, or alienation of such property, or of any part thereof, made by such jágirdár or zamindár, shall be valid as to any time beyond his natural life.

CHAPTER VI.

Of Appeal and Revision.

Appeal.

29. An appeal against any decision or order under sections 14, 15, 16, and 22, and imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings, and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

Miscellaneous.

Power to make rules.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV. of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate

* In s. 27 the words quoted have been inserted by Act XI. of 1884, s. 7.

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amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government-securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Sindh Official Gazette*, and shall thereupon have the force of law.

Power to appoint new manager.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

34 Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses, and compel production of documents.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Sindh in respect of certain suits.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

ACT XXI. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH SEPTEMBER 1881.

An Act to amend the Law providing for the Relief of Thákurs in the Districts of Broach and Kaira.

Preamble.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881:"

Commencement.

and it shall come into force on the passing thereof.

Partial repeal of Act No. XIV. of 1877.

2. Act No. XIV. of 1877 (*to relieve from incumbrances the estates of Thákurs in Broach and Kaira*), except the last three sections, is repealed;

But all applications, appointments, and rules made, all notices published, and all other things duly done under the said Act or under Act No. XV. of 1871 (*to relieve from incumbrances the estates of Thákurs in Broach*), shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV. of 1877, for the words "the said Taluqdárí Settlement-officer," the words "the Taluqdárí Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7," shall be substituted.

Interpretation-clause.

3. In this Act—

"Thákur:"

"Thákur" means also taluqdár, jagirdár, and kasbati, and such other classes of holders of estates as the Local Government may, with the previous sanction of the Governor-General in Council, declare to be Thákurs for the purposes of this Act:

"Heir:"

"Heir" means the person for the time being entitled as heir to a Thákur:

"Commissioner."

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

Application for benefit of Act.

4. At any time within six months after the passing of this Act, any Thákur,

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged

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with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any Thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may, from time to time, be made by the Governor of Bombay in Council in this behalf, either to reject such application, or to direct an inquiry to be made as aforesaid.

Verified statement to be submitted.

6. When an inquiry has been directed under section 5 the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

False averments in statement.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code

Report of inquiry and proceedings thereon.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Talukdárí Settlement-officer for the time being shall, unless the Local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

"Order of management;" to what it extends.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be

acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided. Act XXI. of 1881.

Commencement of management. The management shall be deemed to commence from the date on which the order is published.

Effect of order of management. **9.** On the publication of the order of management the following consequences shall ensue :—

Stay of pending proceedings, &c. *First*, all proceedings then pending in any Civil Court in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed ; and the operation of all processes, executions, and attachments then in force for, or in respect of, such debts and liabilities shall be suspended ;

Bar of fresh proceedings. *Secondly*, so long as the management continues, no fresh proceedings, processes, executions, or attachments shall be instituted in or issued by any Civil Court in British India in respect of such debts and liabilities ;

The debtor incompetent— *Thirdly*, so long as the management continues, the debtor shall be incompetent—

to contract debts, (*a*) to enter into any contract involving him in pecuniary liability, or

to incumber or alienate property, (*b*) to mortgage, charge, lease, or alienate the property under management or any part thereof, or

to grant receipts for rent. (*c*) to grant valid receipts for the rents and profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease, or alienate such property or any part thereof.

10. The manager, shall, during the management of the property, have all

Manager to have powers of owner and to receive rents and profits ; powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

to have powers of Collector for their recovery. and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government :

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

Manager to pay therefrom— **11.** From the sums received or recovered under section 10, the manager shall pay—

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costs of management and repairs,

First, the costs of the management including the costs of necessary repairs;

Government revenue, &c.,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

rent due to superior holder,

Thirdly, the rent (if any) due to any superior holder in respect of the said property;

allowance for maintenance and expenses of debtor and family.

Fourthly, such periodical allowance as the Commissioner may, from time to time, fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

cost of improvements, &c.

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

Residue how disposed of.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8 other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

Notice to claimants against debtor.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujráti calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the Mámlatdárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit.

Claim to contain full particulars.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Entries in books.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14 Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts, and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may—

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

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On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him; and

(*d*) the proceedings, processes, executions, and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions, and attachments stayed or suspended under section 9 shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV. of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV. of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned

as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled. Act XXI. of 1881.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage or sale.

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the Local Government.

25. The manager's receipt for any moneys, rents, or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt a discharge.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23, and 24.

Restoration of owner.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9; and

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3rdly, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, &c., made by restored Thákur valid only for his life.

28. When a Thákur has been restored under section 26 to the possession of any property, no mortgage, charge, lease, or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

Appeal.

29. An appeal against any decision or order under sections 14, 15, 16, and 22, or imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings, and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

Power to make rules.

31. The Local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV. of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government-securities of British India, and ehr of sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

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Power to appoint new manager.

32. The Local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses, and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an enquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits but to all such suits the manager of such property shall be made a party.

Exemption of certain Thákurs from certain provisions of Act.

38. Nothing in section 9 shall be deemed to render any of the following Thákurs, namely, the Thákur of Ahmod, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 28 apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV. of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the Local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

Act XXII. of 1881.

ACT XXII. OF 1881.*

THE EXCISE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH OCTOBER 1881.

An Act to amend the Law relating to the Excise-revenue in Northern India, Lower Burma, and Coorg.

Preamble.

WHEREAS it is expedient to amend the law in force in Northern India, Burma,† and Coorg relating to the production, sale, possession, and import of spirit, fermented liquors, and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Excise Act, 1881."

Local extent.

It extends to the territories† administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, the Central Provinces, Lower Burma,† Coorg, and Ajmer and Merwara; and

Commencement.

It shall come into force on the first day of January 1882.

Repeal of Act X. of 1871.

2. On and from that day the Excise Act, 1871, shall be repealed, but all rules made, powers conferred, and licenses and farms granted under that Act and in force on the same day, shall be deemed to have been respectively made, conferred, and granted under this Act.

Interpretation clause.

3. In this Act—

"Chief Revenue-authority:"

(*a*) "Chief Revenue-authority" means—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces "and the Chief Commissioner of Oudh"‡—the Board of Revenue;

"in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Burma"§—the Financial Commissioner; and

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* Act XXII. of 1881, as amended by Acts VI. of 1885, IX. of 1885, s. 2, and II. of 1887, ss. 5 and 6, has been extended, under s. 5 of the Scheduled Districts Act (XIV. of 1874), to Upper Burma (except the Shan States).

For rules for the regulation of excise in Upper Burma (except the Shan States), see *Burma Gazette*, July 21, 1888, Pt. I., p. 292.

† The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

‡ The words quoted have been inserted by Act XX. of 1890, s. 43 (*1*).

§ The words quoted have been substituted by Act XVIII. of 1888, s. 7.

in the territories respectively administered by the Chief Commissioners of* the Central Provinces,† Coorg, and Ajmer and Merwara—the Chief Commissioner:

"Collector:" (*b*) "Collector" includes any Revenue-officer in independent charge of a district, and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act.

"Commissioner of Revenue." "Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act:

"Magistrate:" (*c*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District:‡

"Place:" (*d*) "Place" includes also house, boat, and raft:

"Tari:" (*e*) "Tari" means the sap of any kind of palm-tree:

"Fermented liquor:" (*f*) "Fermented liquor" means malt liquor, wine, pachwai, and fermented tari, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment:

"Spirit:" (*g*) "Spirit" means any liquor containing alcohol obtained by distillation:

"Intoxicating drugs:" (*h*) The expression "intoxicating drugs" means ganja, bhang, charas, and every preparation and admixture of the same:

"Tola:" (*i*) "Tola" means a weight of one hundred and eighty grains Troy:

"Ser:" (*j*) "Ser" means a weight of eighty tolas:

"Retail:" (*k*) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser, and in Burma§ one reputed quart bottle;

country fermented liquor, four sers, and in Burma § four reputed quart bottles;

bhang, or any preparation or admixture thereof, one quarter of a ser;

ganja or charas, or any preparation or admixture thereof, five tolas;

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* Here the word "Oudh" has been omitted, having been repealed by Act XX. of 1890, s. 43 (*2*).

† The words "British Burma" in s. 3 (*a*), repealed by Act XVIII. of 1888, s. 7, have here been omitted.

‡ Now the District Magistrate.—See Act X. of 1882, s. 3.

§ The word "Burma" has here been substituted for "British Burma" by Act XVIII. of 1888, s. 7.

Act XXII. of 1881.

"Wholesale:" If sold in larger quantities, they shall be deemed to be sold wholesale.

In any case in which doubt arises, the Local Government may decide what, for the purposes of this Act, shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor;" and such decision shall be binding on the Courts.

"Country spirit:"

"Foreign spirit."

Saving of Acts XVI. of 1863 and III. of 1880.

4. Nothing herein contained shall affect Act No. XVI. of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1889.*

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

Manufacture of spirit and liquor without license prohibited.

5. No person shall construct, work, or possess a distillery, still, or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector, or by a person authorized by the Collector to grant such license, and in accordance with the conditions (if any) contained therein.

Power to establish distilleries for country spirit.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time,—

(*a*) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established;

(*b*) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

Duty on spirit.

7. No spirit shall be removed from any distillery licensed under section 5 or established under section 6, until—

(*a*) such duty, as the Local Government may, from time to time, fix in respect of such spirit, has been paid, or†

(*b*) a bond for such duty has been executed, or

(*c*) a duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, direct.

Duty on fermented liquor.

7A ‡ No fermented liquor shall be removed from a brewery licensed under section 5 until—

(*a*) duty has been paid thereon at the rate for the time being leviable under the Indian Tariff Act, 1882, on like liquor imported by sea

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* The reference to Act III. of 1880 has been altered in accordance with Act XIII. of 1889, s. 2 (3).

† Cl. *a* of s. 7 has been substituted by Act IX. of 1885, s. 2. The duty fixed before the 29th May 1885 under s. 6 of the Indian Tariff Act (XI. of 1882) is to be deemed to be the duty fixed by the Local Government under s. 7 of Act XXII. of 1881.—See Act IX. of 1885, s. 4.

‡ S. 7A has been inserted by Act XIII. of 1890, s. 2.

into any part of British India except Aden and Perim, or at such lower rate as the Local Government, having regard to the circumstances of the brewery or of the local area in which the brewery is situate, may from time to time prescribe, or Act XXII. of 1881.

(*b*) a bond for such duty has been executed.

Power to make rules as to distilleries and breweries licensed under section 5;

8.* The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the granting of licenses for distilleries, stills, and breweries under section 5;

(*b*) the notices to be given by the proprietor of a licensed distillery or licensed brewery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, or of the fermented liquor made in such brewery, and the contents of the passes;

(*e*) the inspection and examination of such distillery or brewery and the warehouses connected therewith, and of the spirit or fermented liquor made and stored therein;

(*f*) the furnishing of statements of the spirit and the stills, coppers, casks, and other utensils in such distillery, or of the fermented liquor and the mash-tuns, under-backs, wort-receivers, coppers, heating tanks, coolers, and collecting, fermenting, and other vessels in such brewery.

and for distilleries established under section 6.

9. The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the management of distilleries established under section 6, and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

Sanction to rules under sections 8 and 9.

10. Except in the territories respectively administered by the Chief Commissioners of† the Central Provinces,‡ Coorg, and Ajmer and Merwara, the sanction of the Local Government is required to validate rules under sections 8 and 9.

Production of intoxicating drugs.

11. In Burma,§ the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited, except under, and in accordance with, a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

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* S. 8 has been substituted by Act XIII. of 1890, s. 3.

† Here the word "Oudh" has been omitted, having been repealed by Act XX. of 1890, s. 43 (*2*).

‡ Here the words "British Burma" have been omitted, having been repealed by Act XVIII. of 1888, s. 7.

§ The word "Burma" in s. 11 has been substituted for "British Burma" by Act XVIII. of 1888, s. 7.

Act XXII. of 1881.

In the other territories to which this Act extends, the Chief Revenue-authority may from time to time make such rules to restrict and regulate the cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

Spirit, fermented liquor, and drugs not to be sold without license.

12. No spirit, fermented liquor, or intoxicating drug, shall be sold, except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained;

Proviso.

Provided as follows:—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use, and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease;

(*b*) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may, from time to time, prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district;

(*c*) any person making or producing country spirit, or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor;

(*d*) any cultivator of the hemp-plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or to any person authorized to purchase the same by the Collector's order in writing.

Licenses how granted.

13. Subject to the rules made by the Chief* Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in Burma†) of intoxicating drugs, within his district or any part thereof, or at any place therein.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs wholesale, and licenses for the sale, in Burma,† of intoxicating drugs retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Power to cancel license for cause specified therein.

Any license granted under this section may be cancelled by the Collector for any cause specified therein.

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* Here the word "Controlling" has been omitted, having been repealed by Act XII. of 1891.

† The word "Burma," in s. 13 has been substituted for "British Burma" by Act XVIII. of 1888, s. 7.

14. Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor, or intoxicating drugs, should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs.

Power to cancel license for other causes.

On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

15. Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

Surrender of retail license.

If the Collector is satisfied that there is a sufficient reason for surrendering a liceuse, he may remit the sum so fixed.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm—

Power to farm fees.

(*a*) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in Burma*) of intoxicating drugs:

(*b*) the right to manufacture, in any district or part of a district in which no distillery is established under section 6, country spirit or country fermented liquor.

When the fees so leviable, or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may, from time to time, make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

Farmer to grant licenses.

List of licenses granted by farmer to be filed.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Farm may be cancelled.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

Compensation to farmers in certain cases.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Recovery of arrears by farmers.

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* The word "Burma" in s. 16 (*a*) has been substituted for "British Burma" by Act XVIII, of 1888, s. 7.

Act XXII. of 1881.

Power to regulate supply of tari and intoxicating drugs to licensed vendors.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tari shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

Possession of spirit, &c.

21. No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section 3, clause (*k*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

Proviso.

Nothing in this section extends to—

(*a*) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use, and not for sale, or

(*b*) tari intended to be used for the manufacture of gúr or molasses.

Possession of intoxicating drugs.

22. In Burma* no person shall have in his possession any intoxicating drugs, except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section 3, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT "AND FERMENTED LIQUOR."†

Spirit and fermented liquor from foreign territory subject to duty.

23.‡ (*1*) A person shall not bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until he has obtained a pass therefor from such officer as the Local Government from time to time appoints in this behalf, and has paid in respect thereof—

(*a*) if the Local Government has fixed a duty under clause (*a*) of section 7 for like spirit manufactured in the part of the territory into which the spirit is to be brought, that duty, or

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* The word "Burma" in s. 22 has been substituted for "British Burma" by Act XVIII. of 1888, s. 7.

† The words quoted have been added by Act XII. of 1891.

‡ S. 23 is a new section, substituted by Act II. of 1887, s. 5, for the one originally enacted.

(*b*) if the Local Government has not fixed a duty under that clause for like spirit manufactured in that part, a duty at such rate as the Local Government from time to time prescribes in this behalf, not exceeding the highest rate leviable under the law for the time being in force, on spirit imported into British India by sea. Act XXII. of 1881.

(*2*) The provisions of sub-section (*1*) with respect to spirit shall apply to fermented liquor also, with this modification that the duty to be paid in respect of the liquor shall be the duty leviable on like liquor under the Indian Tariff Act, 1882, "or such lower duty as the Local Government, having regard to the rate or rates of duty for the time being leviable under clause (*a*) of section 7A, may from time to time prescribe."*

(*3*) If any question arises as to the duty to be charged on any spirit or fermented liquor under this section, the decision of the Local Government thereon shall be final.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

Collectors may appoint Excise-officers.

24. The Collector may appoint persons by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Recovery of arrears of fees.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from landholders, or from farmers of land, or their sureties.

Power of Excise-officers to inspect shops;

26. Any Excise-officer may enter and inspect at any time, by day or by night, the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor, or intoxicating drugs.

to arrest persons carrying spirit, &c., liable to confiscation;

27. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act;

and may seize such spirit, liquor, or drug, together with any vessels, packages, or coverings in which it is contained, and any animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor, or drug is found.

to arrest persons in possession of article liable to confiscation, and to seize article

28. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees, "or who receives an annual remuneration equivalent to such salary,"† may arrest any person having in his possession any article liable to con-

* In sub-s. (*2*) of s. 23, the words quoted have been added by Act XIII. of 1890, s. 4.

† The words quoted have been inserted by Act VI. of 1885, s. 1.

Act XXII. of 1881.

fiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor, or intoxicating drug, and may seize such article, spirit, liquor, or drug.

to search on information of illicit manufacture or possession.

29. Whenever any Excise-officer in receipt of such monthly salary "or annual remuneration"* as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed,

such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees, "unless the Excise-officer is himself such an officer of police"*), enter into such place,

and in case of resistance may break open any door, and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

Collector may issue warrant of arrest in certain cases.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor, or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue search-warrant.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act, or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor, or intoxicating drug, liable to confiscation under this Act, is kept or concealed.

Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees, at the time and in the manner prescribed in section 29.

Special warrant authorizing search at night.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section 29, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, &c.;

32. Whenever an Excise-officer arrests any person,

or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure, or search, to his official superior, and, unless acting under the war-

and to take person arrested to Magistrate.

* The words quoted have been inserted by Act VI. of 1885, s. 2.

rant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch, to the Magistrate for trial or adjudication. Act XXII. of 1881.

Procedure after arrest or seizure.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested, or the article seized, to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Police to aid Excise-officers.

34. All police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such officers.

Power to invest police-officers with powers of Excise-officers.

34A.* The Local Government may, from time to time, invest, either by name or in virtue of his office—

(*a*) any police-officer with the powers conferred on Excise-officers by section 27 of this Act;

(*b*) any police-officer in charge of a station or any police-officer of or above the grade of head-constable or sergeant with the powers conferred on Excise-officers by sections 28 and 29 of this Act.

Every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an Excise-officer within the meaning of this Act.

CHAPTER VII.

PENALTIES.

Penalty for illegally manufacturing spirit or liquor;

35. Whoever, in contravention of section 5, constructs, works, or possesses a distillery, still, or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and all spirit and liquor made in contravention of section 5, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

36. Any person who—

for illegally introducing country spirit;

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section 6, any country spirit manufactured at another place, or

for illegally removing spirit;

(*b*) in contravention of section 7 "or section 7A,"† or of any rule made under section 8 or section 9, removes any spirit from a distillery "or any fermented liquor from a brewery,"† or

* S. 34A has been inserted by Act VI. of 1885, s. 3. For Notification under this section concerning Upper Burma, see *Burma Gazette*, Oct. 20, 1888, Pt. I., p. 476.

† In cl. *b* of s. 36 the words quoted have been inserted by Act XIII. of 1890, s. 5.

Act XXII. of 1881.

for illegally importing spirit;

(*c*) in contravention of section 23, brings any spirit "or fermented liquor"* into any territory to which this Act extends,

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and the spirit "or fermented liquor,"* together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

for contravening rules prescribed by Chief Revenue-authority;

37. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section 8 or section 9, shall be punished with fine not exceeding one hundred rupees.

for illegally cultivating hemp and preparing drugs;

38. Any person who, in contravention of section 11 or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

for illicit sale of spirit, &c.;

39. Any person who, in contravention of section 12, sells any spirit, fermented liquor, or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

for permitting drunkenness, &c., in shop;

40. Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot, or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor, or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

for illegal possession of spirit, liquor, or drug;

41. Any person who possesses any spirit, liquor, or drug, in contravention of section 21 or section 22, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both;

and the spirit, liquor, or drug, together with any vessels, packages, and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

for refusal to produce license and for breach of rules and conditions;

42. Any person holding a license under this Act, and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act, or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

for conniving at illicit manufacture or sale of spirit, &c.;

43. Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs, shall, for every such offence, be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

* In cl. *c* of s. 36, the words quoted have been inserted by Act II. of 1887, s. 6.

And any person invested with local jurisdiction, who authorizes or connives at the illegal sale of any spirit, fermented liquor, or intoxicating drug, within the local limits of such jurisdiction, shall be punished with fine which may extend to five hundred rupees. Act XXII. of 1881

for police neglecting to aid Excise-officers;

44. Any police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section 34, and any officer in charge of a police-station who, on application made by an Excise-officer desiring to act under section 29, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

for vexatious search or seizure;

45. Any Excise-officer who—

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

for delay in reporting arrest, &c., or in taking person arrested to Magistrate.

46. Any Excise-officer who, in contravention of section 32 or section 33, neglects to report the particulars of an arrest, seizure, or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

Prosecutions restricted.

47. A Court shall not take cognizance of an offence punishable under any one of the following sections, namely, 35, 36, 37, 38, 39, 41, 42, and 43, except on the complaint or report of the Collector or an Excise-officer; and a Court shall not take cognizance of any offence punishable under this Act unless the prosecution is instituted before the expiry of six months next after the commission of such offence.*

Confinement in what jail.

48. Every person imprisoned for an offence under section 37 or section 42 shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Attempts and abetment.

49. Whoever attempts to commit any offence punishable under this Act or abets, within the meaning of the Indian Penal Code, the commission of any such offence, shall be punished with the punishment provided for such offence.

Disposal of fines, &c., as rewards.

50. Any Magistrate before whom any person is convicted of any offence under section 35, 36, 37, 38, 39, 41, or 43, may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender, and paid by him or realized from his property.

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* This section has been substituted by Act VI. of 1885, s. 4, for the one originally enacted.

Act XXII. of 1881.

Magistrate to pass order of confiscation.

51. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MILITARY CANTONMENTS.

Manufacture and sale of spirits, &c., in military cantonments.

52. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor, be let in farm, unless with the knowledge and consent of the Commanding Officer;

and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits, shall be immediately cancelled.

Mode of making arrest or search in military cantonments.

53. In all other respects the provisions of this Act shall have effect within such limits or distance.*

CHAPTER IX.

MISCELLANEOUS.

Collector subject to control of Commissioner.

54. The Collector shall, in all proceedings under this Act, be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

Additional power to make rules.

55. The Chief† Revenue-authority may, from time to time, make rules consistent with this Act—

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

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* The proviso to s. 53 has been omitted, having been repealed by Act XIII. of 1889, s. 2 and schedule.

† Here the word "Controlling" has been omitted, having been repealed by Act XII. of 1891.

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

Act XXIII. of 1881.

Power to exempt articles and persons.

56. The Local Government may, from time to time, by notification in the official Gazette, exempt, within any specified local area, any specified articles or any specified class of persons from all or any of the foregoing provisions of this Act, and may, by like notification, cancel any such exemption.

ACT XXIII. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH OCTOBER 1881.

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; it is hereby enacted as follows:—

Short title.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881;"

Commencement.

and it shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Amendment of section 1.

3. In section 1 before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.

4, 5. [*Repealed by Act XII. of 1891, Sch. I.*]

Amendment of section 19.

6. In section 19, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

7. To section 38, the following shall be added:—

"The expression 'officer of police' in this section shall not be deemed to include a police-patel appointed under Bombay Act No. VIII. of 1867 (*for the Regulation of the Village-police in the Presidency of Bombay*)."

Amendment of section 44.

8. In section 44, for the word "place," the word "taluqa" shall be substituted.

Addition to section 47.

9. To section 47 the following shall be added, namely:—

"*Explanation.*—The expression 'Civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III. of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*)."

Act XXIV. of 1881.

New section substituted for section 48.

10. For section 48 the following section shall be substituted :—

48. [See *supra, p. 444.*]

New section substituted for section 51.

11. For section 51 the following section shall be substituted :—

51. [See *supra, p. 444.*]

Addition to section 56.

12. To section 56 the following shall be added, namely :—

" or apply to any instrument which is executed by an agriculturist merely as a surety."

New section substituted for section 57.

13. For section 57 the following section shall be substituted :—

57. [See *supra, p. 446.*]

Amendment of section 58.

14. In section 58, for the words "parties to any instrument have executed it," the words " intending executants have executed any instrument " shall be substituted.

New section substituted for section 68.

15. For section 68 the following section shall be substituted :—

68. [See *supra, p. 449.*]

16. [*Repealed by Act XII. of 1891, Sch. I.*]

New section substituted for section 72.

17. For section 72 the following section shall be substituted :—

72. [See *supra, p. 449.*]

ACT XXIV. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH OCTOBER 1881.

An Act to amend Panjáb Laws Act, 1872.

Preamble.

WHEREAS, in order to provide for the establishment of a system of municipal-watchmen in certain municipalities in the territories administered by the Lieutenant-Governor of the Panjáb, it is expedient to amend the Panjáb Laws Act, 1872; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called " The Panjáb Laws Amendment Act, 1881," and shall come into force at once.

Substitution of new sections for sections 39A and 39B.

2. For sections 39A and 39B of the said Act, the following sections shall be substituted :—

39A. [See *Vol. I., p. 980.*]

39B. [See *Vol. I., p. 981.*]

ACT XXV. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH OCTOBER 1881.

An Act to amend the law in force in the Mahál of Bánki.

Preamble.

WHEREAS it has been determined to annex the territory comprised in the mahál of Bánki to the district of Katak:

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874:

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Katak, and that the said territory should cease to be a portion of a scheduled district:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bánki Laws Act, 1881."

Laws of Katak to apply.

2. All enactments which shall on the first day of April, 1882, be in force in the district of Katak and not in the said territory shall be deemed to come into force in the said territory on that day:

Other laws repealed.

And all enactments which shall on that day be in force in the said territory and not in the district of Katak shall be deemed to be repealed on and from that day in the said territory.

3. *Pending proceedings.* [*Repealed by Act XII. of 1891, Sch. I.*]

Territory to cease to be a scheduled district.

4. On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district; and in Part III. of the first schedule to the said Scheduled Districts Act, 1874, for the words "Mahals of Angúl and Bánki," the words "Mahál of Angúl" shall be substituted.*

* In s. 4, certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

Act XXVI. of 1881.

ACT XXVI. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1881.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Negotiable Intruments Act, 1881:"

Local extent.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 25,* or affects any local usage relating to any instrument in an oriental language: Provided that

Saving of usages relating to hundis, &c.

such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and

Commencement.

it shall come into force on the first day of March 1882.

2. [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

3. In this Act—

"Banker."

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary public."

"Notary public" includes also any person appointed by the Governor-General in Council to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS, AND CHEQUES.

"Promissory Note."

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

(*a.*) "I promise to pay B or order Rs. 500."

(*b.*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received."

(*c.*) "Mr. B, I O U Rs. 1,000."

(*d.*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

* See Act XX. of 1882, s. 2.

(*e*.) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*.) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*.) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*.) "I promise to pay B Rs. 500, and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*), and (*h*), are not promissory notes.

"Bill of exchange."

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section 4, although he is mis-named or designated by description only.

"Cheque."

6. A "cheque" is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.

"Drawer." "Drawee."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawee in case of need."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor for honour."

"When a bill of exchange has been noted or protested for non-acceptance or for better security,"* and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

* The words quoted have been substituted by Act II. of 1885, s. 2, for the following: "When acceptance is refused, and the bill is protested for non-acceptance."

Act XXVI. of 1881.

"Payee."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder."

8. The "holder" of a promissory note, bill of exchange, or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill, or cheque, is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course."

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque, if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument.

11. A promissory note, bill of exchange, or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Foreign instrument.

12. Any such instrument, not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

"Negotiable instrument."

13. A "negotiable instrument" means a promissory note, bill of exchange, or cheque, expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiation."

14. When a promissory note, bill of exchange, or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Endorsement.

15. When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full."

"Indorsee."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and, if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Ambiguous instruments.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ-facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight."
"On presentment."
"After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight, and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(*a.*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b.*) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Act XXVI. of 1881.

(c.) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight, or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.

Explanation.—The expression "public holiday" includes Sundays: New-Year's-day, Christmas-day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS, AND CHEQUES.

Capacity to make, &c., promissory notes, &c.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.

Minor.

A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer, and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor, are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties, so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C, and D, are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor, and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Discharge of indorser's liability.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B,"

Second indorsement, "Peter Williams,"

Third indorsement, "Wright & Co.,"

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound, although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. Acceptor of a bill of exchange drawn in a fictitious name, and payable to the drawer's order, is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, &c., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But, if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted, or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument, who has induced any other party to make, draw, accept, indorse, or transfer the same to him for a consideration

which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money-consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange, or cheque, consisted of money, and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange, or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill.

45A.* Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance, or indorsement of a promissory note, bill of exchange, or cheque, is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange, or cheque payable to bearer, is negotiable by the delivery thereof.

* S. 45A has been inserted by Act II. of 1885, s. 3.

Act XXVI. of 1881.

A promissory note, bill of exchange, or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to bearer, is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange, or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

Illustrations.

(*a.*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b.*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement.

48. Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a.*) "Pay the contents to C only."

(*b.*) "Pay C for my use."

(*c.*) "Pay C or order for the account of B."

(*d.*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e.*) "Pay C."

(*f.*) "Pay C value in account with the Oriental Bank."

(*g.*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee, or indorsee, or all of several joint makers, drawers, payees, or indorsees of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a.*) The indorser of a negotiable instrument signs his name, adding the words—"Without recourse."

Upon this indorsement he incurs no liability.

(*b.*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument, who derives title from a holder in due course, has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

Instrument indorsed in bank.

55. If a negotiable instrument, after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

Act XXVI. of 1881.

Legal representative cannot, by delivery only, negotiate instrument indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate, by delivery only, a promissory note, bill of exchange, or cheque payable to order, and indorsed by the deceased, but not delivered.

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when over-due.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn, or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee, or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee, or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.*

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time, after it is made, and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment.

64. Promissory notes, bills of exchange, and cheques, must be presented for payment to the maker, acceptor, or drawee thereof, respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.*

Exception.—Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place, and not elsewhere.

68. A promissory note, bill of exchange, or cheque, made, drawn, or accepted, payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

69. A promissory note or bill of exchange made, drawn, or accepted, payable at a specified place, must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee, or acceptor thereof, as the case may be.

* The last para. of s. 61 and the second para. of s. 64 have been added by Act II. of 1885, s. 4.

Act XXVI. of 1881.

71. If the maker, drawee, or acceptor of a negotiable instrument, has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker, or acceptor, as the case may be, or, where the drawee, maker, or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee, or acceptor, intentionally prevents the presentment of the instrument, or,

if, the instrument being payable at his place of business, he closes such place on a business-day during the usual business-hours, or,

if, the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or,

if the instrument not being payable at any specified place, he cannot, after due search, be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with, or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

78. Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange, or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532,* be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange, or cheque, is, before payment, entitled to have it shown, and is, on payment, entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

Discharge from liability—

82. The maker, acceptor, or indorser, respectively, of a negotiable instrument, is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment.

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor, or indorser, makes payment in due course of the amount due thereon.

* See Act XIV. of 1882, s. 3.

Act XXVI. of 1881.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented, and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless, on notice given by the holder, they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which, under the order, it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration, and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86, and 125.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement, notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange, or cheque, has been materially altered, but does not appear to have been so altered,

within a reasonable time of its issue & the drawer or
person on whose account it is drawn had the right, at the
time when presentment ought to have been made, as between
himself & the banker, to have the cheque paid & suffers actual
damage through the delay, he is discharged to the extent of such
damage, that is to say, to the extent to which such drawer or
person is a creditor of the banker to a larger amount than he
would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall
be had to the nature of the instrument, the usage of trade & of bankers
& the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is
so discharged shall be a creditor, in lieu of such drawer or person, of
such banker to the extent of such discharge & entitled to prove
the amount from him.

Illustrations.

(a) A draws a cheque for Rs 1000, & when the cheque ought to be
presented has funds at the bank to meet it. The bank fails before

fails before the cheque could be presented in ordinary course is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Act II of 1897 s. 3.

or where a cheque is presented for payment which does not, at the time of presentation, appear to be crossed, or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused, and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

92. A promissory note, bill of exchange, or cheque, is said to be dishonoured by non-payment, when the maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange, or cheque, is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Act XXVI. of 1881.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot, after due search, be found; or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason (if any) assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section 100 must contain— Act XXVI. of 1881.

(*a*) either the instrument itself or a literal transcript of the instrument, and of everything written or printed thereupon ;

(*b*) the name of the person for whom, and against whom, the instrument has been protested ;

(*c*) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer (if any), or a statement that he gave no answer, or that he could not be found ;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour; and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest ;

(*f*) in the event of an acceptance for honour, or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.*

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given, instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When noting equivalent to protest.

104A. For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.†

CHAPTER X.

Of Reasonable Time.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour, and for noting, regard shall be had to the nature of

* This para. has been added by Act II. of 1885, s. 5.
† S. 104A has been inserted by Act II. of 1885, s. 6.

Act XXVI. of 1881.

the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post, or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance, or for better security, any person, not being a party already liable thereon, may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.*

How acceptance for honour must be made.

109. A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer, or of a particular indorser whom he names, or generally for honour.†

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable, in their respective capacities, to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has, at its maturity, been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

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* The second sentence of this section has been repealed by Act II. of 1885, s. 7, and has, therefore, been omitted.

† As amended by Act II. of 1885, s. 8.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying, "or his agent in that behalf,"* has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover, from the party for whose honour he pays, all sums so paid with interest thereon, and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee, in case of need, may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532†) be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting, and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser, who, being liable, has paid the amount due on the same, is entitled to the amount, so paid, with interest, at six per centum per annum, from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

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* The words quoted have been inserted by Act II. of 1885, s. 9.

† See Act XIV. of 1882, s. 3.

Act XXVI. of 1881.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumption as to negotiable instruments—

118. Until the contrary is proved, the following presumptions shall be made :—

of consideration;

(*a*) that every negotiable instrument was made or drawn for consideration; and that every such instrument, when it has been accepted, indorsed, negotiated, or transferred, was accepted, indorsed, negotiated, or transferred for consideration;

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date, and before its maturity;

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsements;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

(*f*) that a lost promissory note, bill of exchange, or cheque, was duly stamped;

that holder is a holder in due course.

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained, from the maker or acceptor thereof, by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note, and no acceptor of a bill of exchange payable to, or to the order of, a specified person, shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

Act XXVI. of 1881.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall

Payment of cheque crossed specially.

not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

128. Where the banker, on whom a crossed cheque is drawn, has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to, and placed in, if the amount of the cheque had been paid to, and received by, the true owner thereof.

Payment of crossed cheque out of due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent, for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable."

130. A person taking a cheque crossed generally or specially, bearing, in either case, the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Act XXVI. of 1881.

Non-liability of banker receiving payment of cheque.

131. A banker, who has, in good faith, and without negligence, received payment, for a customer, of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered, and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first-acquired part entitled to all.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor, or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque, is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange, or cheque, is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour, and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted, or indorsed out of British India, but in accordance with the law of British India, the circumstance, that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange, and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

CHAPTER XVII.*

NOTARIES PUBLIC.

138. The Governor-General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act, and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to appoint notaries public.

139. The Governor-General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

Power to make rules for notaries public.

SCHEDULE.

[*Repealed by Act XII. of 1891, Sch. I.*]

* Ch. XVII. has been inserted by Act II. of 1885, s. 10.

Act I. of 1882.

ACT I. OF 1882.*

THE ASSAM LABOUR AND EMIGRATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 6TH JANUARY 1882.

An Act to amend the Law relating to Emigration to the Labour-districts of Bengal and Assam.

WHEREAS it is expedient to amend the law relating to the emigration of natives of India to the Districts of Chittagong, the Chittagong Hill Tracts, Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara, Khasi Hills, Cachar, and Sylhet; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1.† This Act may be called the Assam Labour and Emigration Act, 1882.

Local extent.

It extends—

(*a*) to the territories respectively administered by the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, and Assam, and to the District of Ganjam; and

(*b*) to such other portions of the territories administered by the Governor of Fort St. George in Council as the Governor in Council, with the previous sanction of the Governor-General in Council, may, by notification in the Fort St. George Gazette, from time to time direct.

Commencement.

It shall come into force—

(*i*) in the territories mentioned in clause (*a*) of this section, at once; and

(*ii*) in any territories to which it may be extended by a notification under clause (*b*) of this section, on such day as may be specified in that behalf in such notification.

Contracts, &c., under repealed enactments.

2. All contracts entered into, rules and appointments made, orders and notifications published, and licenses granted, under‡ Bengal Act No. VII. of 1873, or any of the Acts thereby repealed, and now in force, shall be deemed to have been respectively entered into, made, published, and granted under this Act.§

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* Act I. of 1882 has been declared in force in the Santál Párganás by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2.

† S. 1 has been substituted for the original by the Inland Emigration Act (VII. of 1893), s. 2.

‡ In s. 2, the words, "the said," have been omitted, having been repealed by Act XII. of 1891, Sch. I.

§ The first paragraph of s. 2, as originally enacted (which repeals Ben. Act VII. of 1873 and Regulation IV. of 1877), has been omitted, having been repealed by Act XII. of 1891, Sch. I.

Act I. of 1882.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Labour-districts:"

The expression, "the labour-districts," means the districts of* Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara,† Cachar, and Sylhet; and the expression, "a labour-district," means any one of such districts:

"Magistrate:"

"Magistrate" means a Magistrate of a District, Sub-divisional Magistrate, and any other person appointed, by name or by virtue of his office, by the Local Government to perform the functions of a Magistrate under this Act:

"Superintendent," "Registering Officer," "Inspector," and "Assistant Inspector:"

"Superintendent," "Registering Officer," "Inspector," and "Assistant Inspector," mean, respectively, a Superintendent of Emigration, a Registering Officer, an Inspector of Labourers, and an Assistant Inspector of Labourers appointed under this Act:

"Contractor," "sub-contractor," "recruiter," and "local agent:"

"Contractor," "sub-contractor," "recruiter," and "local agent," mean, respectively, a contractor, a sub-contractor, a recruiter, and a local agent licensed under this Act:

"Labour-contract:"

"Labour-contract" means a contract entered into in accordance with the provisions of this Act to labour for hire in a labour-district, otherwise than as a domestic servant:

"Labourer:"

"Labourer" means any person bound by a contract under the provisions of the said Bengal Act No. VII. of 1873,‡ or by a labour-contract under the provisions of this Act. And it also includes any person registered under section 32 or section 66 as a labourer:

"Estate:"

"Estate" means the land upon which any labourers or more than fifty other persons have been engaged to labour:

"Employer:"

"Employer" means the chief person for the time being in charge of any estate upon which labourers or more than fifty other persons are employed:

"Emigrate:"

"Emigrate" denotes the departure of any native of India of the age of sixteen years or upwards (other than a native of a labour-district) from any part of the territories administered by the Lieutenant-Governor of Bengal,§ or from the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the "Chief Commissioners of Oudh and the Central Provinces, or from any portion of the territories administered by the Governor of Fort St. George in Council in which this Act may, for the time being, be in force,‖" for the purpose of labouring for hire in a labour-district otherwise than as a domestic servant:

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* Here the words, "Chittagong, the Chittagong Hill Tracts," have been omitted, having been repealed by the Inland Emigration Act (VII. of 1893), s. 3.

† Here the words "Khasi Hills" have been omitted, having also been repealed by the Inland Emigration Act (VII. of 1893), s. 3.

‡ Ben. Act VII. of 1873 has been repealed by s. 2 of this Act (I. of 1882).

§ Here the words, "not being a labour-district," have been omitted, having been repealed by the Inland Emigration Act (VII. of 1893), s. 3.

‖ The words quoted have been substituted for the words, "Chief Commissioner of Oudh," by the Inland Emigration Act (VII. of 1893), s. 3.

Act I. of 1882.

"Dependent:" "Dependent" includes* any woman (not being a labourer), any child and any aged or incapacitated relative or friend accompanying any labourer with the consent of a contractor, sub contractor, recruiter, local agent, or garden-sardar:

"Vessel:" "Vessel" includes anything made for the conveyance by water of human beings or property:

"Master:" "Master" means the person for the time being in charge of a vessel:

"Writing" and "written:" "Writing" and "written" include "printing" and "lithography."

Words to be understood as defined in Contract Act. And all words defined in the Indian Contract Act, 1872, and used in this Act, shall have the meanings respectively assigned to them by that Act.

Power to exempt labour-district. **4.** The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that any labour-district, "or specified area thereof,"† within the territories administered by such Government shall, from a day specified in such notification, cease to be subject to all the provisions or any specified provision of this Act; and from such day such labour-district "or area"† shall cease to be subject to the provisions of this Act or to the provision so specified, as the case may be.

Local Government may prohibit emigration to any labour-district or part thereof. **5.** The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, prohibit, from a day specified in such notification, all natives of India, or any specified class of such natives, from emigrating from the whole or any specified part of the territories under its administration, to any labour-district or to any specified portion of any such district.

The Local Government may, with the like sanction, in like manner, vary or cancel any such notification.

Notification under sections 4 and 5 not to affect prior acts, &c. **6.** The publication of a notification under section 4 or section 5 shall not affect any act done, offence committed, or proceedings commenced before such publication.

Saving of free emigration and of ordinary contract law. **7.** Save as provided by section 5, nothing in this Act shall be deemed to prohibit any native of India from emigrating to, or entering into a contract to labour in, a labour-district otherwise than under the provisions of this Act.

Appointment of officers. **8.** The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Superintendents of Emigration, Registering Officers, Embarkation Agents, Debarkation Agents, Inspectors of Labourers, Assistant Inspectors of Labourers, and Medical Inspectors under this Act, respectively, and, with respect to any such officer, may, subject to the control

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* The word "includes" has been substituted for the word "means" by the Inland Emigration Act (VII. of 1893), s. 3.

† The words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 4.

of the Governor-General in Council, declare the local area situate in the territories subject to its administration within which he shall exercise the powers, and perform the duties conferred and imposed upon him by this Act or any rule made hereunder. Act I. of 1882.

The Local Government may suspend or remove any persons whom it so appoints.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

CHAPTER II.

LABOUR-CONTRACTS GENERALLY.

Essentials of labour-contract.

9. Every labour-contract shall be in writing, and shall be executed in duplicate on substantial paper. Every such contract shall specify—

(*a*) the names of the labourer and his employer;

(*b*) the term for which the labourer is to labour;

(*c*) his monthly wages in money and the price at which rice is to be supplied to him;

(*d*) the labour-district in which, and, if the labourer so request, the estate on which, he is to labour.

Every such contract shall be in the form prescribed in the schedule hereto annexed.

No such contract shall be made for a term exceeding four years or, if the contract is entered into under the provisions of section 111 of this Act, for a term exceeding one year, commencing from the date of its execution; or shall stipulate for a less rate of monthly wages for a completed daily task regulated in accordance with the provisions of this Act than five rupees in the case of a man and four rupees in the case of a woman, for the first three years of the term of the contract, and six rupees in the case of a man and five rupees in the case of a woman for the fourth year of such term.*

No contract made in contravention of, or not in accordance with, the provisions of this section, shall be enforceable under this Act as a labour-contract against the labourer entering into it.

In absence of specific obligation, underground labour not obligatory.

9A.† Unless the contract contains a specific obligation to this effect, no labourer shall be bound by any labour-contract entered into under this Act to undertake any work involving underground labour in mines.

If contract does not specify estate, labourer to be deemed to have contracted to labour on any estate in charge of employer, and situate in labour-district.

10. Unless the labour-contract specifies the particular estate on which the labourer is to labour, the labourer shall be deemed to have contracted to labour on any estate in charge of the employer for whom he has contracted to labour, and situate in the labour-district specified in the contract:

* This paragraph has been substituted for the original by the Inland Emigration Act (VII. of 1893), s. 5.

† S. 9A has been inserted by the Inland Emigration Act (VII. of 1893), s. 6.

Act I. of 1882. Provided that no labourer shall, without his own consent, be separated from his dependents (if any) or from any other labourer who is the wife, husband, son, or daughter of such labourer.

Persons of sixteen years of age may contract to emigrate.

11. Notwithstanding anything to the contrary in the Indian Contract Act, 1872, it shall be lawful for any person of the age of sixteen years or upwards to enter into a labour-contract.

Power of Local Government to cancel contract for wrongful recruitment.

11A.* If the Local Government, after such enquiry as it thinks sufficient, is of opinion that any labourer was recruited or conveyed to a labour-district, or compelled or induced to enter into a labour-contract, by any coercion, undue influence, fraud, or misrepresentation, or that any such irregularity has occurred in connection with his recruitment or the execution of his contract as makes it just to rescind his contract, the Local Government may, by an order in writing, direct the labour-contract of such labourer to be cancelled.

On receipt of any such order by the Local Government, the Superintendent, Inspector, or Magistrate, shall cancel the contract referred to, and shall thereupon make an endorsement that it has been so cancelled on the labourer's copy of the contract, or, if the same be not forthcoming, shall give to the labourer a certificate to that effect.

Power to cancel contract of labourer related to labourer whose contract is cancelled.

11B.* When the labour-contract of any labourer is or has been cancelled under the last foregoing section, the Local Government may, at its discretion, and on the application of the labourer concerned, cancel the labour-contracts of any labourer, being the wife, husband, father, mother, son, or daughter of the labourer whose labour-contract is or has been cancelled, who may have entered into a labour-contract at the same place with the same employer, or, in the case of labour-contracts cancelled in the labour-districts, may be employed on any estate belonging to the same employer.

Repatriation of labourers whose contracts cancelled for wrongful recruitment.

11C.* Subject to any orders which the Local Government may issue in this behalf, the Superintendent, Inspector, or Magistrate, may send back to his native district any labourer, together with his dependents (if any) whose contract has been cancelled under section 11A, and may recover the whole or any part of the expenses incurred in so sending him back as follows, namely:—

(*a*) when the contract has been cancelled before the labourer has reached the labour-districts, in accordance with the provisions of section 49 or section 79, as the case may be, as if it were a sum recoverable under one of those sections;

(*b*) when the contract has been cancelled in a labour-district, from the employer on whose estate the labourer was under contract to labour, as if it were an arrear of wages.

Escort for repatriated labourer.

11D.* In any case in which a labourer is sent back to his native district under the provisions of the last foregoing section, the Superintendent, Inspector, or Magistrate, may provide an escort, or make such other arrangements as may appear to him to be

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* Ss. 11A, 11B, 11C, and 11D, have been inserted by the Inland Emigration Act (VII. of 1893), s. 7.

necessary for ensuring that such labourer is actually conveyed to such district. Any expenditure incurred in providing such escort or making such arrangements may be recovered as part of the amount expended in sending such labourer back to his native district. Act I. of 1882.

CHAPTER III.

RECRUITING BY CONTRACTORS, SUB-CONTRACTORS, AND RECRUITERS.

A.—Contractors and Sub-Contractors.

Superintendent may license contractors.

12. Any Superintendent specially empowered in this behalf by the Local Government may grant to such persons as he thinks fit licenses to be contractors within the whole or any part of the local area for which such Superintendent has been appointed. He may also, on the application of any contractor, grant to such persons as he thinks fit licenses to be sub-contractors on behalf of such contractor, within the whole or any part of the local area for which such contractor is licensed.

Superintendent may license sub-contractors.

Form of, and fee for, contractors' and sub-contractors' licenses.

13. Every license to a contractor or sub-contractor shall be in such form, and subject to the payment of such fee, not exceeding, in the case of a contractor, one hundred rupees, and, in the case of a sub-contractor, fifty rupees, as the Local Government may by rule prescribe.

Period for which contractors' and sub-contractors' license to remain in force.

14. No such license shall be granted for a longer period than one year from the date thereof, and, if the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may at any time be cancelled by the Superintendent who granted the same.

Appeal against order cancelling license.

A contractor or sub-contractor may, within one month from the date of any order of a Superintendent cancelling his license, appeal against such order to the Local Government.

The order of the Local Government on such appeal shall be final.

Duties of contractors.

15. Every contractor, in addition to the special duties herein assigned to him, shall afford such information to the Superintendent, and furnish him with such returns and reports, as he may, subject to any rules which may be framed by the Local Government in this behalf, require.

Sub-contractor only to represent one contractor.

16.* No sub-contractor shall be licensed to act on behalf of more than one contractor.

Contractor or sub-contractor may act as recruiter.

17. A contractor or sub-contractor may act as a recruiter, and shall, when so acting, be subject to all the provisions hereinafter contained relating to recruiters.

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* S. 16 has been substituted for the original by the Inland Emigration Act (VII. of 1893), s. 8.

Act I. of 1882.

18. Every contractor shall be liable for the acts and defaults as a sub-contractor or recruiter of any person licensed to be a sub-contractor or recruiter on his behalf, and shall be bound to make good all payments which, under this Act or any rule made hereunder, any such person is ordered to make.

Liability of contractors for sub-contractors' and recruiters' acts and defaults.

The Superintendent may cancel the license of any contractor whenever the license of any person so licensed on his behalf is liable to be cancelled under this Act.

Nothing in this section shall be deemed to render a contractor criminally liable for any act or default on the part of any person licensed to be a sub-contractor or recruiter on his behalf.

19. Every contractor shall establish and maintain, at such places as the Local Government may direct, suitable depôts for the reception and lodging, previous to their despatch to the labour-districts, of labourers engaged by him or by sub-contractors or recruiters licensed to act on his behalf, and shall provide at his own expense all necessary food, clothing, and medical treatment for such labourers during their stay at such depôts.

Contractor to establish depôts.

20. No such depôt shall be used for the reception and lodging of labourers until it has been inspected and approved of by the Superintendent and the Medical Inspector. Every such depôt shall be under the supervision of the Superintendent, the Magistrate of the district, or such other officer as the Local Government may appoint in this behalf, and shall be open at all times to inspection by the Superintendent, the Magistrate of the district, or such officer, and by the Medical Inspector.

Inspection and supervision of depôts.

Whenever the Superintendent considers that any such depôt is unhealthy, or has become unsuitable for the purpose for which it was established, he may, by order in writing, prohibit the using of such depôt for the reception and lodging of labourers.

21. In addition to the depôts hereinbefore provided for, the Local Government may establish a separate hospital-depôt for the reception of labourers suffering from any dangerously infectious or contagious disease.

Establishment of hospital-depôts.

22. Whenever any such hospital-depôt is established by any Local Government, such Government may require any contractor having a depôt in the neighbourhood of such hospital-depôt to contribute to the expense of the establishment and maintenance of such hospital-depôt, such reasonable sum as it may direct. Such sum may be recovered as an arrear of land-revenue due from any contractor so required.

Contractor to contribute towards establishment and maintenance of hospital depôt.

Every hospital-depôt so established shall be under the charge of a Medical Officer appointed by the Local Government. Any Medical Inspector may direct the transfer of any labourer from a depôt established within the local limits of his jurisdiction to a hospital-depôt established within such local limits.

B.—Recruiters.

23. Any Superintendent empowered in this behalf by the Local Government may, on the application of any contractor, or of any sub-contractor acting on behalf of a contractor, grant to such persons as he thinks fit licenses to be recruiters on behalf of

Superintendent may license recruiters.

such contractor within the whole or any specified part of the local area for which such contractor has been licensed. Act I. of 1882.

Form of, and fee for, recruiter's license.

24. Every license to a recruiter shall be in such form and subject to the payment of such fee, not exceeding sixteen rupees, as the Local Government may by rule prescribe.

Period for which license is granted.

25. No such license shall be granted for a longer period than one year from the date thereof; and, if the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may be cancelled by the Superintendent who granted the same.

Recruiter must hold a certificate.

26. Every recruiter shall hold a certificate in writing, authorizing him to act as such, and signed by the contractor or sub-contractor on whose application he was licensed.

Countersignature of recruiter's license.

27. No recruiter shall, in any local area, engage or attempt to engage any person as a labourer unless such recruiter's license bears the countersignature of a Magistrate having jurisdiction throughout such local area.

No such Magistrate shall countersign a recruiter's license unless and until he has satisfied himself by such inquiry as he thinks fit that the licensee is not, by character or from any other cause, unfitted to be a recruiter under this Act, that he holds the certificate mentioned in section 26, and that sufficient and proper accommodation has been provided in a suitable place, and is available for such labourers, or persons intending to become labourers, as may be collected by such recruiter pending their removal to a depôt.

Magistrate to supervise accommodation.

28. Every Magistrate shall have, for the supervision, inspection, and regulation of the place situate within the local limits of his jurisdiction where such accommodation is provided, the same powers as are by this Act conferred on the Superintendent in respect of depôts.

Any Magistrate of a district or division of a district may authorize any Magistrate subordinate to him, or any officer of police above the rank of sub-inspector, to visit and inspect such place at any time; and all recruiters or other person in charge of such place shall afford to Subordinate Magistrates and officers of police so authorized every facility for making such visits and inspections.

Magistrate may cancel countersignature in certain cases.

29. If any Magistrate who has countersigned a recruiter's license afterwards finds reason to think that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided under section 27 has become insufficient or improper, or has ceased to be available, or that the place in which it is provided has become unsuitable, he may require the licensee to produce his license, and may cancel his countersignature thereon, or he may impound the license, and send it for cancellation to the Superintendent who granted the same.

Notice to Superintendent of refusal to countersign or cancellation.

Every Magistrate refusing to countersign a recruiter's license, or cancelling his countersignature thereon, shall at once report such refusal or cancellation and the grounds thereof to the Superintendent who granted such license.

C.—Procedure before arrival at Depôt.

Intending labourer to be taken for examination to Medical Officer.

30. Every recruiter who desires to engage any person as a labourer shall appear with such person before such Medical Officer as the Local Government may appoint to examine such persons within the local limits of the jurisdiction of the Magistrate by whom such recruiter's license was countersigned, or, if no such officer has been appointed, before such Medical Officer as the Registering Officer before whom such person is taken for registration, as hereinafter provided, may direct.

The Medical Officer shall thereupon examine such person, and shall, if satisfied that he is in a fit state of health, and able in point of physical condition to proceed to the labour-district in which he intends to labour, give him a certificate to that effect.

If certified to be fit, intending labourer to be brought before Registering Officer.

31. Every person who obtains a certificate under section 30, together with any persons about to proceed to a labour-district as his dependents, shall thereupon be brought by the recruiter before the Registering Officer having jurisdiction within the local area for which such recruiter is licensed. The recruiter shall at the same time produce and show his license to such Registering Officer.

Intending labourer to be examined by Registering Officer.

32. The Registering Officer shall thereupon inspect the certificate given under section 30, and the license of the recruiter, and, if he finds that such certificate has been duly given, and that the recruiter is duly licensed, shall then examine such person, with reference to his intended labour-contract, and explain the same to him.

Intending labourer to be registered.

If it appears that such person is competent to enter into such contract, and understands the same as regards the locality, period, and nature of the service, and the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation, or mistake, and that he is willing to fulfil the same, the Registering Officer shall register in a book to be kept for the purpose such particulars regarding him and the persons (if any) whom he wishes to have registered as his dependents as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

Copy of registration to be given to labourer.

33. The Registering Officer shall furnish to the person so registered a certified copy of such particulars written on substantial paper.

Copy of registration and medical certificate to be sent to Superintendent.

34. Every officer registering any person under section 32 shall forthwith forward a certified copy of such particulars and the original certificate of the Medical Officer regarding him to the Superintendent having jurisdiction over the depôt to which such person is to proceed.

Fee for registration.

35. For every such person produced before a Registering Officer for the purpose of being registered as a labourer, the recruiter shall pay to the officer such fee, not exceeding one rupee, as the Local Government may by rule direct.

36. No recruiter shall remove or attempt to remove any person to a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Registering Officer before whom such person ought to be brought under section 31, or aid or attempt to aid him in going to a depôt, or leaving any such local limits, unless and until such person has been registered under section 32.

Recruiter when to remove person to depôt.

37. Every labourer shall, after he has been registered under section 32, be conveyed with all convenient despatch by the recruiter by whom he has been engaged to the depôt established by the contractor on whose behalf such recruiter has been licensed.

Conveyance of labourer to depôt.

All labourers shall, while proceeding to the depôt, be accompanied throughout the journey either by the recruiter himself, or by a competent person deputed by him with the approval of the Registering Officer by whom such labourers have been registered. The Registering Officer shall give to the person so deputed a certificate under his signature, stating that he has been deputed for the journey to the depôt.

Recruiter to accompany labourer, or depute person approved by Registering Officer.

38. Every recruiter or person deputed by him as aforesaid shall, throughout the journey to the depôt, provide such labourer and his dependents (if any) with proper and sufficient food and lodging.

Recruiter must provide food and lodging for labourer on journey.

D.—Procedure at Contractors' Depôts.

39. Within twenty-four hours after a labourer arrives at a depôt, the contractor by whom such depôt is maintained, or the person in charge thereof, shall give to the Superintendent, within the local limits of whose jurisdiction such depôt is situate, a notice in writing of such arrival, which notice shall be in such form, and shall contain such particulars, as the Local Government may by rule prescribe.

Contractor to report arrival of labourer.

40. The Medical Inspector shall, as soon as may be after the labourer arrives at the depôt, examine such labourer and his dependents (if any) to ascertain that they are in a fit state of health to undertake the journey to the labour-district to which they intend to proceed.

Duties of Medical Inspector.

The Medical Inspector shall give a certificate to the Superintendent, stating whether he is or is not satisfied of the fitness of the labourer and his dependents (if any) to undertake such journey.

41. If the Medical Inspector gives a certificate of fitness under section 40 with respect to any labourer, and, in the opinion of the Superintendent, there is no valid reason why such labourer should not enter into a labour-contract, such labourer and the employer with whom he intends to contract, or the agent of such employer, shall, within thirty days after the arrival of the labourer at the depôt, execute a labour-contract in the presence of the Superintendent.

If certificate of fitness granted, labourer to enter into labour contract.

42. Before the labourer executes such contract, the Superintendent shall personally explain it to him, and shall, after the same has been executed by such labourer and his employer, or the agent of such employer, attest such contract, and certify at the foot thereof that he has personally explained the same to the labourer.

Contract to be explained to labourer by Superintendent.

Act I. of 1882.

Abstract to be made of contract, and copies of contract given to labourer and employer.

An abstract of every such contract shall be entered in a register to be kept by the Superintendent for the purpose; and, after such abstract has been so entered, one copy of the contract shall be given to the labourer, and the other to his employer or his employer's agent.

Employer may require medical certificate as to fitness to labour previous to contract.

42A.* If the employer with whom any labourer intends to contract, or the agent of such employer, has given notice to the Superintendent that before any labour-contract is entered into by him or on his behalf with any labourer, the labourer shall be examined by a competent medical man and certified by him to be in a fit state of health and able in point of physical condition to reside and labour for hire in the labour-district in which the estate of such employer is situate, the Superintendent shall not permit such labourer to execute a labour-contract until such certificate from such medical man as aforesaid has been produced and shown to him.

Medical officer entitled to fee.

42B.* If the employer or his agent has directed that such examination shall be made by any medical officer in the service of Government, such officer making the examination shall be entitled to receive from such employer or his agent such a fee not exceeding eight annas for each labourer so examined as the Local Government may fix.

Power to cancel contract and order payment of expenses home of labourer in certain cases.

43. In the following cases (namely):—

(*a*) where the Medical Inspector, on making the examination required by section 40, or at any subsequent time during the stay at the depôt of any labourer, finds that such labourer is or has become unfit to undertake the journey to the labour-district to which he intends to proceed, and the Superintendent considers that such labourer has not dishonestly represented himself as fit to undertake such journey, or

(*b*) where the Superintendent finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any such labourer as makes it just to refuse to permit a labour-contract to be executed, or to rescind such contract if executed, or

(*c*) where the contractor on whose behalf or by whom the labourer has been registered does not, within thirty days after the arrival of such labourer at the depôt, tender to him a labour-contract for execution under section 41, or the employer or his agent refuses or neglects to execute such contract as required by that section,

the Superintendent may cancel the labour-contract executed by such labourer, and in that case, or if no labour-contract has been executed, may order the contractor at once to pay such labourer such reasonable sum as is necessary to enable him to return to the place at which he was registered, and such further sum by way of compensation as the Superintendent thinks reasonable; and may take any other steps he thinks necessary for the conveyance of such labourer to such place.

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* Ss. 42A and 42B have been inserted by the Inland Emigration Act (VII. of 1893), s. 9.

44. Any labourer who from his state of health is, in the opinion of the Medical Inspector, unfit to undertake such return-journey, shall be entitled to be fed, lodged, clothed, and (if necessary) medically treated at the depôt at the expense of the contractor by whom such depôt is maintained, until he is reported by the Medical Inspector to be fit to undertake such return-journey.

Labourer when to be lodged, &c., at depôt till he can return home.

If such contractor negligently or wilfully omits to provide food, lodging, clothing, or medical treatment for such labourer, the Superintendent may order the contractor at once to pay such reasonable sum as is necessary to provide such food, lodging, clothing, or medical treatment.

Contractor omitting to provide food, &c., for labourer.

45. When an order is made under section 43 with reference to any labourer, any person registered as his dependent, or any labourer being the wife, husband, son, or daughter of such labourer, may claim—

Like provisions in case of dependents and relatives.

(*a*) to be conveyed at the expense of the contractor with such labourer to the place at which he was registered, and

(*b*) if such labourer is unable to travel, to be fed, lodged, clothed, and (if necessary) medically treated in the depôt at the expense of the contractor until such labourer is able to travel; and the Superintendent may include such expenses in an order made under section 43 or section 44 with respect to such labourer.

46. If, upon the arrival of any labourer at a depôt, it appears that during the journey to the depôt such labourer, or any person registered as his dependent, has suffered any ill-treatment at the hands of the recruiter or person deputed by him to accompany such labourer, or that such recruiter or such person has failed to provide the labourer or any person registered as his dependent with proper and sufficient food and lodging, the Superintendent may order the contractor by whom such depôt is maintained to pay such labourer a reasonable sum by way of compensation.

Compensation to labourer for ill-treatment on the journey.

47. If the Medical Inspector has reason to think that any person registered as the dependent of a labourer is not in a fit state of health to undertake the journey to the labour-district to which the labourer whose dependent he is intends to proceed, the Medical Inspector shall so certify to the Superintendent to whom notice of the arrival of such labourer was given. The provisions of sections 43 and 44 shall thereupon apply to such dependent as if he were a labourer, and the Superintendent may make such orders regarding him as he may make under those sections with regard to a labourer.

Procedure when dependent declared unfit to proceed to labour-district.

48. The labourer to whom such dependent is attached shall thereupon be entitled, if he or she so wishes, and if he or she be the husband, wife, son, or daughter of such dependent, to receive from the contractor at whose depôt he or she arrived such reasonable sum as is necessary to enable him or her to return to the place where he or she was registered. If such labourer so return, then any other persons registered as his or her dependents, and any other labourer being the wife, husband, son, or daughter of such labourer, shall also be entitled to receive a like sum from such contractor.

Labourer and relatives entitled to be returned with dependent.

Act I. of 1882.

Failure of contractor to pay sums ordered to be paid under section 43, 44, 45, 46, 47, or 48.

49. On failure of the contractor for twenty-four hours to comply with an order of the Superintendent to pay any sum ordered to be paid under section 43, section 44, section 45, section 46, section 47, or section 48, the Superintendent may pay the same to, or on behalf of, the labourer or dependent.

Every sum so paid shall be recoverable from the contractor with interest thereon at the rate of twelve per cent. per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Superintendent gave the contractor an order to pay such sum, and that the contractor for twenty-four hours failed to comply with such order.

Provisions for way-bill.

50. All labourers despatched from a contractor's depôt to a labour-district shall, during their journey, be accompanied by a person appointed by such contractor. Such person shall take with him a way-bill in such form, and containing such particulars and instructions as the Local Government may prescribe.

He shall also present such way-bill at all such places and to all such officers as may be thereupon indicated, and shall carry out all instructions contained therein for his guidance.

CHAPTER IV.

RECRUITING BY GARDEN-SARDARS AND LOCAL AGENTS.

A.—Garden-sardars.

Employer may grant certificate to garden-sardar.

51. Any employer may grant to any person a certificate authorizing him, within such local area as may be specified in such certificate, to enter into labour-contracts with persons desirous of becoming labourers upon any estate of which such employer is in charge.

Every person to whom such certificate has been granted is hereinafter called a garden-sardar.

If any labourer is granted a certificate under this section, his employment as a garden-sardar shall be deemed to be employment under his labour-contract.

Form and particulars to be contained in such certificate.

52. Every such certificate shall be in such form, and shall contain such particulars, as the Local Government of the territories in which it is granted may prescribe in this behalf.

Any employer granting a certificate to a garden-sardar may, before such certificate is accepted and signed as hereinafter provided, specify therein the name of the local agent (if any) to whom such garden-sardar is to report himself for orders and the time within which he is to return to such employer, and any other instructions for his conduct that he may think proper.

Certificate to be accepted and signed in presence of Inspector or Magistrate.

53. Every such certificate shall be accepted and signed by the garden-sardar in the presence of the Inspector or a Magistrate having jurisdiction over the place where the employer granting such certificate resides.

54. Such Inspector or Magistrate shall inquire into the facts stated in such certificate, and, upon being satisfied of the truth of the statement, shall, unless it appears to him that the person so accepting and signing such certificate is, by character or from any other cause, unfitted to be a garden-sardar, countersign and date such certificate.

Inspector or Magistrate to countersign certificate.

55. On the application of the employer by whom any certificate so countersigned has been granted to a garden-sardar, such Inspector or Magistrate may, without requiring the appearance of the garden-sardar, or making the inquiry prescribed by section 54, countersign a fresh certificate to be granted by such employer to such garden-sardar in renewal of any existing certificate.

Provision for grant of fresh certificate.

Every such fresh certificate shall be forwarded by the Inspector or Magistrate countersigning it to the Magistrate of the district in which the garden-sardar to whom it is granted is employed; and such sardar shall, on receiving notice from such Magistrate, appear before him, and accept and sign such fresh certificate in his presence.

Such fresh certificate to be forwarded to Magistrate of district where garden-sardar is employed, and to be accepted and signed by garden-sardar.

56. No certificate granted to a garden-sardar shall come into force unless and until it has been accepted and signed by the garden-sardar, and countersigned by the Inspector or Magistrate, and no such certificate shall continue in force for a longer period than one year from the date of its countersignature.

Certificate when to come into force.

57. Every garden-sardar shall provide sufficient and proper accommodation in a suitable place for such labourers, or persons intending to become labourers, as may be collected by him pending their removal to a labour-district.

Accommodation to be provided by garden-sardar.

The Magistrate of a district or of a division of a district, or a Magistrate subordinate to him, or an officer of police above the rank of sub-inspector authorized by him in this behalf, shall visit and inspect such accommodation; and all garden-sardars or other persons in charge of such places shall afford to such Magistrate, Subordinate Magistrate, or officer of police, every facility for making such visits and inspections.

In every such place the garden-sardar providing the accommodation shall make such sanitary arrangements as the Local Government may prescribe.

58. Whenever a garden-sardar contravenes any of the provisions of this Act, or the rules made hereunder, or is guilty of any other misconduct, any Magistrate, Superintendent, or Inspector, within the local limits of whose jurisdiction such garden-sardar is employed, may cancel his certificate.

Certificate may be cancelled in certain cases.

B.—Local Agents.

59. Any Superintendent authorized in this behalf by the Local Government may, on the application of any employer, grant licenses to persons to be local agents for the purpose of representing such employer within such local area and for such period as such employer may desire:

Local agents may be licensed.

Provided that no contractor shall be licensed as a local agent.

Act I. of 1882.

Powers and duties of local agents.

60. A local agent may, within such local area, represent his employer in all matters connected with the engagement of labourers; and shall furnish such information and make such returns as the Local Government may by rule direct.

Local agent may represent more than one employer.

61. The Superintendent authorized as aforesaid may, on the application of any employer other than the employer on whose application a local agent has been licensed, make an order in writing, permitting such agent to become the local agent of such additional employer within the local area for which he was licensed. The Superintendent making such order shall forthwith send a copy thereof to the Magistrate of the district in which such agent resides; and such Magistrate shall, on the agent's application, insert in his license the name of such additional employer.

Local agent may be specially licensed to contract direct with labourers.

62. Any Superintendent authorized as aforesaid may, with the consent of all the employers of a local agent, grant a special license to such agent, permitting him to engage, on behalf of any employer specified in such special license, but without the intervention of a garden-sardar, persons to be labourers.

Every agent, when so engaging persons to be labourers, may, if he thinks fit, appear with them for registration before a Registering Officer, and require them, when so registered, to execute a labour-contract, and, in such case, shall, for the purposes of this Act, be deemed to be a garden-sardar.

Local agent may prosecute garden-sardar.

63. When any garden-sardar to whom a certificate has been granted under this Act by any employer commits any offence punishable under this Act, any local agent of such employer may prosecute the sardar for such offence.

On what grounds local agent's license may be cancelled.

64. The Magistrate of any district within which a local agent acts as such may by order cancel the license of such local agent if the employer so require, or if it is shown to the satisfaction of such Magistrate that such local agent has—

(*a*) employed any contractor's recruiter to engage on his behalf persons to be labourers; or

(*b*) permitted persons engaged as labourers by or on behalf of any contractor to use the accommodation provided for the persons engaged as labourers by any garden-sardar under such local agent's control; or

(*c*) allowed any garden-sardar under his control to transfer persons engaged as labourers by such sardar to contractors or to their recruiters, or to any employer other than the employer by whom such sardar's certificate was granted; or

(*d*) himself taken over persons engaged as labourers by any garden-sardar with intent to despatch them to any employer other than the employer by whom such sardar's certificate was granted.

An appeal shall lie to the Local Government from any order made under this section, clause (*a*), (*b*), (*c*), or (*d*). Such appeal must be presented within three months next after the date of the order, and the decision of the Local Government thereon shall be final.

C.—Procedure to be followed by Garden-sardar.

Garden-sardar and labourer to appear before Registering Officer for registration.

65. Every garden-sardar who desires to engage any person as a labourer shall appear with such person, together with any persons about to proceed to a labour-district as dependents of such person, before the Registering Officer having jurisdiction within the local area specified in the certificate of such sardar.

Registration of persons engaged by garden-sardar.

66. The Registering Officer shall thereupon inspect the certificate of the garden-sardar, and, if he finds that such certificate is in force, shall examine, with reference to the intended labour-contract, the person whom the sardar so desires to engage, and explain the contract to such person.

If it appears that such person is competent to enter into such contract, and understands the nature of the same, as regards the locality, period, and nature of the service, and the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation, or mistake, and that he is willing to fulfil the same, the Registering Officer shall register in a book to be kept for the purpose such particulars regarding him and his dependents (if any) as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

Medical examination.

67. If it appears to such officer that any such person, or any dependent of such person, is not in a fit state of health to undertake the journey to the labour-district to which he intends to proceed, the officer may, before registering any such person or dependent, if himself a medical man, medically examine such person or dependent, or, if not himself a medical man, send such person or dependent to a medical man for such examination. If upon such examination such person or dependent is declared unfit to undertake the journey to such place, the officer may refuse to register such person or dependent.

Fee to be paid for every labourer produced for registration.

68. For every person appearing before a Registering Officer for the purpose of being registered as a labourer, the garden-sardar who appears with him shall pay to the officer such fee not exceeding one rupee as the Local Government may direct.

Labour-contract to be executed.

69. When any person has been registered under section 66 as a labourer, he shall, within fifteen days from the day on which he was so registered, execute a labour-contract with the employer with whom he intends to contract. Such contract shall be signed in the presence of the Registering Officer by such person, and, on behalf of the employer, by the garden-sardar who appears with such person before such officer. The officer shall satisfy himself that the contract is in accordance with any instructions specified in the certificate of the garden-sardar. If the officer is so satisfied, he shall, before the labourer signs the contract, personally explain it to him, and shall, after the same has been executed as aforesaid, attest such contract, and certify at the foot thereof that he has personally explained the same to the labourer.

An abstract of every such contract shall be entered in a register to be kept for the purpose by the Registering Officer, and, of the two copies of the contract, one shall then be given to the labourer, and the other to the garden-sardar or the local agent.

Act I. of 1882.

If any garden-sardar, without reasonable cause, refuses or neglects to execute a contract with a labourer, as required by this section, within fifteen days from the day on which he was so registered, the Registering Officer may order such sardar to pay to the labourer such reasonable compensation, not exceeding 20 rupees, as such officer thinks fit.

Procedure when employer requires medical examination previous to registration.

70. If the employer of a garden-sardar has, in the instructions specified in the certificate of the sardar, directed that all labourers engaged by him shall, before registration, be examined by a competent medical man, and certified by him to be in a fit state of health to undertake the journey to, and labour in, the labour-districts to which they intend to proceed, no Registering Officer shall register as a labourer any person appearing before him with such sardar until such certificate from such Medical Officer as aforesaid has been produced and shown to him.

Medical Officer entitled to fee.

71. If the employer has, in the instructions specified in the certificate of the garden-sardar, directed that such examination shall be made by any Medical Officer in the service of Government, such officer making the examination shall be entitled to receive from the local agent or sardar such a fee, not exceeding eight annas for each labourer so examined, as the Local Government may fix.

Garden-sardar when to remove labourer to labour-district.

72. Unless and until a person engaged as a labourer has been registered under section 66, no garden-sardar shall remove or attempt to remove him to a labour-district, or induce or attempt to induce him to go to a labour-district, or to leave the local area specified in the certificate of such sardar, or aid or attempt to aid him in proceeding to a labour-district, or in leaving any such local area.

Garden-sardar to accompany labourers, or send competent person with them.

73. A garden-sardar shall either himself accompany labourers engaged by him throughout their journey from the place in which the labour-contract was entered into to the labour-district wherein they have contracted to labour, or shall send with them some competent person appointed by him with the approval of the local agent of his employer; or, if his employer has no local agent, with the approval of the officer by whom such labourers were registered.

When the number of labourers (exclusive of dependents) proceeding on their journey to such labour-district is more than twenty, for every twenty labourers so in excess, or for any number of labourers less than twenty so in excess, one additional garden-sardar or person so appointed by him shall accompany the labourers so proceeding.

No restriction on number of persons engaged by garden-sardar.

74. A garden-sardar may, subject to the instructions specified in his certificate, engage any number of persons as labourers; and, subject to the provisions of section 73, any number of labourers may be despatched at the same time to the labour-districts.

In certain cases garden-sardar may be appointed to accompany labourers not engaged by him.

75. Any garden-sardar may, with the previous consent in writing of the local agent of the employer by whom his certificate was granted, or, if such employer has no local agent, with the previous consent in writing of such employer, be appointed under section 73 as a competent person to accompany labourers other than those engaged by him.

Act I. of 1882.

Provision for way-bill.

76. Every garden-sardar or person appointed by him as aforesaid, who accompanies labourers to the labour-districts, shall present to the officer, by whom such labourers have been registered, a way-bill in such form, and containing such particulars, and instructions, as the Local Government may prescribe. He shall also present such way-bill at all such places, and to all such officers, as may be thereupon indicated, and shall carry out all instructions contained therein for his guidance.

Garden-sardar must provide food and lodging for labourers and dependents on journey.

77. Every garden-sardar or person appointed by him as aforesaid, who accompanies labourers to the labour-districts, shall provide such labourers and their dependents (if any) with proper and sufficient food and lodging throughout the journey.

If such be not provided, Magistrate may award compensation, or cancel contract.

78. If it appears to any Magistrate, on the complaint of any such labourer at any place on the journey, that he or any person registered as his dependent has suffered any ill-treatment during the journey at the hands of the garden-sardar or person appointed by him accompanying such labourer, or that such sardar or person has failed to provide such labourer or any of his dependents with proper and sufficient food and lodging, or has wilfully abandoned such labourer or any of his dependents, such Magistrate may either order the sardar or person so appointed to pay to such labourer a reasonable sum by way of compensation, or may cancel the labour-contract entered into by such labourer, and order such sardar or person to pay to such labourer such reasonable sum as is necessary to enable him with his dependents (if any) to return to the place at which he was registered.

Procedure on failure of garden-sardar to comply with order.

79. On failure for twenty-four hours by any garden-sardar or person appointed by him as aforesaid to comply with an order under section 78 to pay any sum, the Magistrate may pay the same to, or on behalf of, such labourer.

Every sum so paid shall be recoverable from the employer by whom the certificate of such garden-sardar was granted, or from the local agent of such employer, with interest thereon at the rate of twelve per centum per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Magistrate gave such garden-sardar or person an order to pay such sum, and that such garden-sardar or person for twenty-four hours failed to comply with such order.

Medical inspection of labourers *en route*.

80. Any Magistrate or any Embarkation Agent may, if himself a medical man, examine, and, if not himself a medical man, send for examination by a medical man, any labourer or dependent who, while on the journey to the district to which he intends to proceed, appears to such Magistrate or Agent not to be in a fit state of health to proceed thereto.

Detention and return of labourer declared, when *en route*, to be unfit to travel.

81. If such labourer or dependent is on such examination declared not to be in a fit state of health to undertake the journey to the labour-district to which he intends to proceed, the Magistrate or Embarkation Agent may order him to be detained at such place as he thinks fit, until the labourer or dependent is in a fit state of health to undertake such journey, when he shall either be forwarded to such district, or sent back to the place where he was registered, ac-

Act I. of 1882.

cording as the garden-sardar or person appointed by him accompanying such labourer or dependent, or the employer by whom the certificate of such sardar was granted, or his local agent, may direct.

While any labourer or dependent is so detained, he shall be entitled to be fed, lodged, clothed, and (if necessary) medically treated at the cost of the employer with whom such labourer, or the labourer to whom such dependent is attached, has contracted to labour.

Dependents of labourer when to be fed, &c.

82. When an order under section 81 has been made with reference to any labourer, any person registered as his dependent, and any labourer being the wife or husband of such labourer, shall be entitled—

(*a*) until such labourer is in a fit state of health to undertake such journey, to be fed, lodged, clothed, and (if necessary) medically treated at the place where such labourer is detained, and at the cost of the employer with whom such labourer has contracted to labour, and,

(*b*) if such labourer is sent back to the place where he was registered, to be sent back to such place.

Labourer to whom dependent is attached when to be fed, &c.

When any such order has been made with reference to any dependent, the labourer to whom he is attached shall thereupon, until such dependent is in a fit state of health to undertake the journey to the labour-district, be entitled, if the labourer so wishes, and if he or she be the husband, wife, son, or daughter of such dependent, to be fed, lodged, clothed, and (if necessary) medically treated at the place where such dependent is detained, and at the cost of the employer with whom such labourer has contracted to labour; and, if such dependent is sent back to the place where he was registered, such labourer shall, if he or she so wishes, and if he or she be the husband, wife, son, or daughter of such dependent, be sent back to such place.

If such labourer is entitled and claims to be so fed, lodged, clothed, and (if necessary) medically treated, or to be so sent back, any person registered as his or her dependent, and any other labourer being the wife or husband of such labourer, shall be entitled, as the case may be—

(*a*) to be fed, lodged, clothed, and (if necessary) medically treated at the place where such dependent is detained, and at the cost of such employer, until such dependent is in a fit state of health to undertake the journey to the labour-district, or

(*b*) to be sent back to the place where he or she was registered.

Payment of expenses of detention and return-journey of labourer.

83. If the garden-sardar or person appointed by him accompanying any labourer or dependent fails to provide such labourer or dependent with food, lodging, clothing, and medical treatment, or to send him back as required by section 81 or section 82, the Magistrate or Emigration Agent may order such sardar or person to pay such sum as is necessary to provide such food, lodging, clothing, and medical treatment, or to defray the cost of the return-journey of such labourer or dependent, as the case may be, to the place where he was registered; and, on failure, for twenty-four hours, of such sardar or person to comply with such order, he may pay the sum specified in the order to, or on behalf of, such labourer or dependent.

The provisions of section 79 shall, *mutatis mutandis*, apply to the recovery of sums paid by the Magistrate or Embarkation Agent under this section. Act I. of 1882.

Agent in Calcutta may procure order from Superintendent cancelling the labour-contract on payment of expense of return.

84. If any labourer whose labour-contract has been executed by a garden-sardár on behalf of his employer is brought to Calcutta on his way to the district in which he has contracted to labour, any person empowered to act as the agent or representative of such employer may require such labourer to appear before the Superintendent for the cancellation of such contract. If such reasonable sum as is necessary to enable such labourer and his dependents (if any) to return to the place at which he was registered, "and such further sum (if any) by way of compensation as the Superintendent thinks reasonable,"* be paid to such labourer in his presence, the Superintendent may declare the contract cancelled, and in that case shall make an endorsement to that effect on the labourer's copy of the contract, and attest it with his signature.

In that case contracts of relatives to be cancelled.

85. When the Superintendent declares the labour-contract of any labourer to be cancelled, any other labourer who is the wife, husband, father, mother, son, or daughter of such labourer, and who may have entered into a labour-contract at the same place with the same employer, may claim to have her or his labour-contract cancelled at the same time. On such claim being made, the Superintendent shall declare the labour-contract of the claimant to be cancelled, and shall order the agent or representative of the claimant's employer to pay to the claimant such reasonable sum as is necessary to enable him and his dependents (if any) to return to the place at which he was registered.

On failure for twenty-four hours of the agent or representative to comply with such order, the Superintendent may pay the sum specified in the order to or on behalf of the claimant; and the provisions of section 79 shall, *mutatis mutandis*, apply to the recovery of any sum so paid.

CHAPTER V.

TRANSPORT BY RIVER.

A.—Passenger Vessels.

Transport by sea to labour-districts.

86. Nothing in this chapter shall apply to the transport by sea of natives of India to the labour-districts.†

Vessels to carry more than 20 passengers must be licensed.

87. No master shall receive more than twenty passengers, being natives of India, on board his vessel for the purpose of transporting them to a labour-district, unless a license to carry passengers in such vessel has been granted to him by an Embarkation Agent duly empowered in that behalf by the Local Government.

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* The words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 10.

† Here the words, "of Chittagong and the Chittagong Hill Tracts," have been omitted, having been repealed by the Inland Emigration Act (VII. of 1893), s. 11.

Act I. of 1882.

Power to exempt vessels.

The Local Government may, by notification in the official Gazette, exempt, from the provisions of this section, any vessel or class of vessels.

Application for license.

88. The master or owner of any vessel who desires to obtain a license under this Act to carry passengers in such vessel shall make a written application for a license to an Embarkation Agent empowered as aforesaid.

Contents of application.

Every such application shall state such particulars respecting the vessel as the Local Government may by rule prescribe.

Grant of license.

89. If such Embarkation Agent is of opinion that the vessel is in all respects suitable for carrying passengers, being natives of India, to a labour-district, he shall give to the master of the vessel a license to carry passengers therein, specifying the number of passengers, being natives of India, which may be received on board.

Fee for license.

90. Such fee, not exceeding sixteen rupees, as the Local Government may, with reference to the size of such vessel, by rule direct, shall be paid for every such license. No such license shall be in force for more than one voyage.

Provision for annual licenses.

Provided that the Embarkation Agent may, from time to time, with the previous sanction of the Local Government, grant a license to the master of any vessel for any term not exceeding one year, on payment of such fee not exceeding one hundred rupees, and on such conditions, as the Local Government may by rule direct.

Embarkation Agent may limit number to be received on board on any particular voyage.

91. Any Embarkation Agent may, in accordance with such rules as the Local Government may prescribe in this behalf, direct, by order in writing, that, on any particular voyage or part of a voyage, any master licensed hereunder shall not receive on board his vessel more than a specified number of passengers, being natives of India, which number shall be less than the number specified in the license granted to such master.

Two children under ten to be counted as one person.

92. In computing the number of persons on board of any vessel, two children under the age of ten years shall, for the purposes of this Act, be reckoned as one person only.

Master to make returns.

93. Every master to whom a license is granted hereunder shall keep such lists, submit such returns, and make such reports in regard to the passengers carried in his vessel as the Local Government may by rule prescribe.

Provisions, clothing, medical and other officers, cooks, &c.

94. Every such master shall have on board his vessel carrying labourers and their dependents such supplies of provisions and clothing, and such medical and other officers, cooks, and attendants, as the Local Government may by rule prescribe.

Medical Officer to be licensed.

95. No Medical Officer shall be appointed to any vessel in respect of which a license is granted hereunder unless he holds a license granted by such authority as the Local Government may appoint in that behalf; and any Medical Officer not so licensed

shall be forthwith removed from his appointment on the requisition of any officer empowered by the Local Government to make such requisition. Act I. of 1882.

B.—Departure of Passenger Vessels and Procedure during Voyage.

Embarkation Agent may order departure of vessel if delay occurs.

96. Whenever it appears to any Embarkation Agent that the departure of any vessel in respect of which a license is granted hereunder is unduly delayed beyond the date fixed by order of a Superintendent or the Local Government, or notified by advertisement in the public press, for such departure, he may order the master of such vessel to proceed on his voyage at once.

Master to receive way-bills from Embarkation Agent.

97. No master licensed hereunder shall proceed on a voyage with his vessel carrying labourers until he has received from the Embarkation Agent the way-bills relating to all labourers on board. The Embarkation Agent and the master of the vessel shall together personally ascertain that the number of labourers on board corresponds with the number entered in such way-bills.

The Embarkation Agent shall send a copy of such way-bills to the Magistrate of the labour-district to which such labourers are proceeding.

Labourers not allowed finally to leave vessel at any place other than that mentioned in way-bill.

98. No such master shall cause or permit any labourer finally to leave his vessel at any place other than that named in the way-bill as the destination of such labourer:

Provided that this section shall not be deemed to prevent the master of any vessel from permitting such labourers to disembark at any place or places on the voyage so long as such disembarkation is not intended or known to be likely to be final; nor to prevent the final disembarkation of any such labourers, or the transfer of such labourers with their dependents to any other vessel in case of accident or other unavoidable necessity. Such accident or necessity shall be forthwith reported by the master to the Embarkation Agent by whom he was licensed, and to the nearest Magistrate in the district within which such accident has occurred, or necessity has arisen.

Master to stop his vessel at certain places where there is a Magistrate.

99. Every master licensed hereunder shall stop his vessel carrying passengers, being natives of India, at such places, being places where a Magistrate is stationed, and shall, unless the Magistrate permits him to depart earlier, remain at each such place for such time, not exceeding six hours of daylight, as the Local Government may direct. Such master shall, on arriving at any such place, immediately report to the Magistrate the number of the crew and other persons on board, the general state of their health, and the number of deaths (if any) which have occurred among the persons who embarked on board his vessel.

Magistrate may at any time inspect vessel.

Master bound to give all information required.

100. A Magistrate may, while any vessel in respect of which a license is granted hereunder is within the local limits of his jurisdiction, go on board such vessel, and inspect the vessel and all persons, being natives of India, on board. The master and officers of such vessel shall afford to such Magistrate every facility for such inspection, and give him all such information as he may reasonably require respecting the labourers or other persons on board, the deaths (if any) which may have occurred on board, and any other facts which may affect the health of the passengers.

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101. At any time while any such vessel is within the local limits of his jurisdiction, the Magistrate may regulate the communication between such vessel and the land, and may prohibit all persons from leaving such vessel, and all persons on land from proceeding on board her.

Magistrate may regulate communication between vessel and land.

102. Any Magistrate may, if he has reason to believe that any passengers, being natives of India, on board any such vessel, within the local limits of his jurisdiction, are, or are likely to be, affected with any dangerously infectious or contagious disease, detain such vessel, and require the Civil Medical Officer of the district or other qualified Medical Officer to inspect such passengers, and to report on their health, stating whether any or what measures are requisite for the removal or prevention of such disease. After the receipt of such report, the Magistrate may order any such passenger suffering from any such disease to be disembarked and detained for medical treatment. If, in the opinion of the Inspecting Medical Officer, it is dangerous to the health of the general body of the passengers to allow such vessel to proceed until measures have been taken to cleanse and disinfect her, the Magistrate may detain the vessel for a further period, not exceeding three days, for the purpose of carrying out such measures.

Magistrate may detain vessel for inspection and for removal of disease, and may detain sick native passengers.

103. If, on receiving a report of a Medical Officer, it appears to a Magistrate that any labourer or any dependent of any labourer, though not suffering from any such disease as last aforesaid, is not in a fit state of health to proceed to the labour-district in which such labourer has contracted to labour, he may order such labourer or dependent to be detained, and shall cause all necessary arrangements to be made for the accommodation, support, and medical treatment of the labourer or dependent so detained.

Magistrate may detain sick labourers;

and shall arrange for their accommodation and treatment.

104. All expenses incurred under section 103 by a Magistrate in respect of any labourer or dependent so detained shall be recoverable from the employer of such labourer, together with interest at six per centum per annum.

Expenses how to be recovered.

105. Whenever it appears to a Magistrate making an inspection of any vessel, in respect of which a license is granted hereunder, that the number of passengers on board, being natives of India, is larger than the number specified in such license, or than the number specified in an order of an Embarkation Agent made under section 91, he may remove the excess number, and detain them until another opportunity of forwarding them to their destination is found. The necessary expense of maintaining such passengers while so detained, and of forwarding them to their destination, shall be paid by such Magistrate, and shall be recoverable from the master or owner of such vessel.

Measures to be taken if excess number of native passengers is found on board.

106. Whenever, on making an inspection of any vessel in respect of which a license is granted hereunder, a Magistrate finds that any of the provisions of this Act, or of any rule of the Local Government made hereunder, have not been complied with in respect of such vessel, he shall report the same to the Embarkation Agent by whom such license was granted; and, if he considers it necessary to do so, he may detain the vessel until such provisions have been so complied with as to make it possible for the

Infraction of the Act and rules to be reported.

Vessel may be detained.

voyage to be further prosecuted with safety and reasonable comfort to the emigrants. Act I. of 1882.

Power to make rules regulating disembarkation and other matters.

107. The Local Government may make rules regulating—

(*a*) the disembarkation of labourers and their dependents, and their inspection and accommodation on arrival at their destination;

(*b*) the detention of such labourers or dependents at debarkation-depôts;

(*c*) the forwarding of labourers to their destination, and the closing and return of way-bills by employers.

All expenses incurred by any Magistrate or Debarkation Agent in accordance with such rules shall be recoverable from the employers of such labourers, together with interest at the rate of twelve per centum per annum.

Magistrate may depute a Subordinate Magistrate to discharge the functions of the Magistrate.

108. The Magistrate of a district, or of a division of a district, may, from time to time, authorize any Subordinate Magistrate, Medical Officer, or officer of police above the rank of sub-inspector, to exercise the powers and authorities conferred, and to perform the duties imposed, on a Magistrate under sections 99 to 106, both inclusive.

CHAPTER VI.

PROVISIONS AS TO THE LABOUR-DISTRICTS.

A.—Annual Rate payable by Employers.

Annual rate payable by employer.

109. Every employer shall, on the first day of January and the first day of July in each year, pay, in respect of each labourer then in his employ, such rate, not exceeding an annual sum of one rupee, as the Local Government may, by notification in the official Gazette, direct.

Payment of rate how to be enforced.

110. If any employer fails, for the space of one month after the receipt of a notice in such form and served in such manner as the Local Government may prescribe, to pay any sum due by him under the provisions of the last preceding section, such sum shall be recoverable as if it were an arrear of land-revenue due from such employer.

B.—Local Labour-contracts.

Labour-contracts executed in labour-districts between employer and native direct.

111.* Any employer may enter into a labour-contract, for any term not exceeding one year, commencing from the date of the execution of the contract, with any native of India within the labour-district in which the estate on which such native contracts to labour is situated. When any employer has executed any such contract with any such native within a labour-district, he shall, within one month from the date of the execution of such contract, forward it in duplicate to the Inspector within the local limits of whose jurisdiction such estate is situated. On receipt of the contract so forwarded, the In-

* Ss. 111, 111A, 111B, 112, 112A, and 112B, have been substituted for the original ss. 111 and 112 by the Inland Emigration Act (VII. of 1893), s. 12.

Act I, of 1882.

spector shall enter an abstract thereof in a register to be kept by him for the purpose, and shall then give one copy of the contract to the labourer, and the other copy to his employer.

Registration of such contracts.

111A.* When, for the first time after the registration of any such contract with a labourer, the Inspector visits the estate on which such labourer is employed, the employer shall cause such labourer to appear before the Inspector for the purpose of having his contract verified, and such labourer may thereupon apply to the Inspector to cancel the contract; and, if he shows cause sufficient, in the opinion of the Inspector, to justify the cancellation, the Inspector shall cancel the contract, and shall thereupon make an endorsement that it has been cancelled on the labourer's copy of the contract, or, if such copy be not forthcoming, shall give to the labourer a certificate to that effect.

Verification and cancellation of such contracts.

111B.* The Inspector or Magistrate may at any time, either on the application of the employer or the labourer, or of his own motion, require the employer to cause any labourer, who has entered into a contract under section 111, and is employed upon any estate within the local limits of the jurisdiction of the Inspector or Magistrate, to appear before him for the purpose of having his contract verified; and, if such labourer applies to the Inspector or Magistrate to cancel his contract, and shows cause sufficient, in the opinion of the Inspector or Magistrate, to justify such cancellation, the Inspector or Magistrate shall cancel the contract as provided in the last-preceding section.

Power of Inspector or Magistrate to require labourer, who has executed such contract, to appear before him.

112.* Notwithstanding the provisions of section 111, any employer may enter into a labour-contract with any native of India in a labour-district for any term not exceeding four years commencing from the date of the execution of the contract if he appears either in person or by agent with such native before the Inspector or Magistrate within the local limits of whose jurisdiction the estate upon which such native is about to contract to labour is situated.

Labour-contracts executed within labour-districts before Inspector or Magistrate.

Such Inspector or Magistrate shall thereupon explain the labour-contract to such native, and shall, if satisfied that he is competent to enter into and understands the same, call upon him and the employer or his agent to execute it in his presence; and, if they execute it, shall attest such execution with his signature.

An abstract of every such labour-contract shall be entered in a register to be kept by the Inspector or Magistrate for the purpose; and one copy of such contract shall then be given to the labourer, and the other copy to his employer or his agent.

In respect of every labour-contract an abstract whereof is registered under section 111 or under this section, the employer who executes such contract in person or by agent shall pay to the Inspector or Magistrate such fee, not exceeding one rupee, as the Local Government may from time to time direct.

112A.* For the purposes of the last-preceding section an estate situated in any one of the following districts of the Assam Valley Division, namely, Kamrup, Darrang, Nowgong, Sibsagar, and Lakhimpur, shall be deemed to

Execution of labour-contract before Inspector or Magistrate of Dhubri.

* Ss. 111, 111A, 111B, 112, 112A, and 112B, have been substituted for the original ss. 111 and 112 by the Inland Emigration Act (VII. of 1893), s. 12.

be also situate within the local limits of the jurisdiction of the Inspector and Magistrate resident at the civil station of Dhubri in the Goalpara District; and, subject to such rules as the Local Government may prescribe in this behalf, contracts to labour on any estate in any of the labour-districts above named, may be executed and registered before the Inspector or Magistrate at Dhubri in accordance with the provision of the last preceding section. Act I. of 1882.

Power of Local Government to frame rules in connection with the execution of labour-contracts at Dhubri.

112B.* The Local Government may, after previous publication, make rules consistent with this Act with respect to all or any of the following matters, namely:—

(*a*) the execution and registration of contracts under section 112A before the Inspector or Magistrate at Dhubri;

(*b*) the medical examination at Dhubri by the Civil Surgeon or other competent medical man of labourers and persons intending to become labourers and their dependents;

(*c*) the conditions under which depôts, rest-houses, and other places, may be established and maintained at Dhubri for the reception and lodging of labourers and persons intending to become labourers and their dependents; the sanitation and management of such depôts, rest-houses, and other places; the arrangements for food, water, and conservancy therein; the clothing and necessary utensils to be supplied to persons lodged therein; and the hospital accommodation for, and medical treatment of, such persons;

(*d*) the control and inspection by officers of Government of such depôts, rest-houses, and other places; and

(*e*) the registers to be kept, and the reports and returns to be made, by the persons in charge of such depôts, rest-houses, and other places.

C.—Employers' Returns and Magistrates' Inspections.

Registers to be kept and returns made by employers.

113. Every employer shall keep such registers of all labourers and other persons employed on the estate of which he is in charge, in such form, and shall make to the Inspector within the local limits of whose jurisdiction such estate is situate such periodical returns in writing, as the Local Government may by rule prescribe. The Inspector may examine such registers and muster all labourers and other persons employed on any estate within such local limits, and may verify the accuracy of the entries in such registers, or in any prescribed periodical return.

Powers of Inspector or Magistrate to inspect lands and houses and to make requisitions and inquiries.

114.† Any Inspector or Magistrate or any person authorized by either of them in writing in this behalf may at any time enter and inspect all lands and houses wholly or partially used by or for labourers, or by or for any other natives of India employed on any estate, and may require that all such labourers or natives, or any particular class or classes or individual or individuals of them, shall be brought before him, and that a copy of the labour-contract of any labourer shall be produced, and may make any inquiries which he thinks proper touching the condition or treatment of such labourers or other natives or any of them, and the employer shall be bound to comply with such requisition and to answer such inquiries to the best of his ability.

* Ss. 111, 111A, 111B, 112, 112A, and 112B, have been substituted for the original ss. 111 and 112 by the Inland Emigration Act (VII. of 1893), s. 12.

† S. 114 has been substituted for the original by the said Act VII. of 1893, s. 13.

Act I. of 1882.

D.—Regulation of Labour.

Schedule of task-work to be prepared.

115. Every employer shall prepare a schedule specifying the daily task to be executed by each labourer employed on the estate of which such employer is in charge, and may, from time to time, alter any schedule so prepared.

One copy of every such schedule shall be filed in a book which shall be open to the examination of the Inspector, and another copy thereof in the Bengali language shall be stuck up in some conspicuous place accessible to the labourers to whom such schedule relates.

The minimum payment for each daily task shall be the quotient resulting from dividing the monthly wage of the labourer concerned by the "number of working days in the current month. The number of working days in any month shall be ascertained by deducting the number of Sundays from the whole number of days in the month."*

Limitations and conditions of task-work.

116. No labourer shall be bound to labour more than six days in one week, or more than six consecutive hours, or more than nine hours in any one day. Every labourer shall, for one day in each week, receive wages as for a full task done, without being required to labour for the same. The employer shall, on six days in each week, provide for each labourer work sufficient to enable him to earn at least his minimum daily wage. Failing such due provision of work, the labourer shall, if he can show that he was able and willing to labour for the same, be entitled to claim his minimum daily wage.

Provisions for revision of schedule by Inspector subject to appeal to Committee.

117. If the Inspector considers that any schedule of daily tasks, or any part thereof, is unreasonable, he may, by order in writing, direct that a reduction specified in such order be made of such tasks. The employer shall at once make such reduction, but may, if dissatisfied with the Inspector's order, by notice in writing require the Inspector to refer the schedule to a committee for consideration. Such committee shall consist—

(*a*) of the Inspector,

(*b*) of some person to be nominated by the employer whose schedule is to be considered, and

(*c*) if practicable, of a Medical Officer.

Where the employer fails to nominate a person within seven days after being thereunto requested in writing by the Inspector, the Inspector, instead of the employer so failing, may nominate a person.

When the committee consists only of the Inspector and of a person nominated by the employer or Inspector, the Inspector shall have the casting vote.

Committee to revise schedule.

118. If such committee, or a majority thereof, is of opinion that the daily tasks specified in such schedule, or any of them, are unreasonable, they shall modify and reduce them in such manner as they think fit. The employer shall thereupon alter his schedule accordingly, and copies of the schedule so altered shall be filed and stuck up in the manner directed in section 115, and shall, as between him and the labourers concerned, take the place of the former schedule.

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* The words quoted have been substituted for the words, "whole number of days in the current month," by the Inland Emigration Act (VII. of 1893), s. 14.

119. Notwithstanding anything contained in any such schedule, the Inspector may order that any specified labourer, who is, in his opinion, unable, from weakness, to earn by his labour the sum of one anna and-a-half per diem, according to the said schedule, shall receive, in lieu of such actual earnings, subsistence-allowance at the rate of one anna and-a-half per diem, or diet on a scale to be approved by such Inspector. Such subsistence-allowance shall be recoverable as if it were an arrear of wages. Act I. of 1882.

Provision for weakly labourers.

E.—Incapacity for Labour.

120. The Inspector within the local limits of whose jurisdiction any labourer is employed may release such labourer, for such period as he thinks fit, from performing his labour-contract, if he be, in the judgment of such Inspector, temporarily unfitted for the performance thereof by reason of sickness or other sufficient cause.

Inspector may suspend contract of any labourer temporarily unfitted for labour.

Every such release shall be endorsed by the Inspector on the labour-contract, and the time during which the release continues shall not be reckoned as part of the term for which the labourer is bound to serve. Every such labourer shall, during such release, receive such subsistence-allowance from his employer as the Inspector thinks sufficient.

121. If any labourer is compelled to absent himself from work on account of sickness, he shall receive from his employer for each day of such absence subsistence-allowance of one anna and-a-half, or, if in hospital, sick-diet on a scale to be approved by the Inspector.

Labourer absent from sickness.

If such absence exceeds the total number of thirty days in any one year, and the employer, as soon as such number is exceeded, gives the labourer a notice in writing to that effect, each day of absence in excess of such number shall be added to the term of the labour-contract, unless the labourer refunds to the employer the sum of one anna and-a-half for each day so in excess.

"The Inspector shall, from time to time, when visiting the estate, on the application of the employer, and may also at any other time on the application of either the employer or the labourer, endorse on the labourer's labour-contract, after such enquiry as may be necessary, the number of days so to be added to the term thereof:*

"Provided that an employer who omits to apply for the endorsement of such days on any labourer's labour-contract, when the Inspector is actually visiting the estate, shall, in the absence of sufficient reasons to the contrary shown to the satisfaction of the Inspector, be debarred from applying afterwards for such endorsement in so far as days of absence which occurred prior to the date of the Inspector's last visit are concerned."*

122. If, in the opinion of the Inspector, any labourer is permanently incapacitated for the performance of his labour-contract or any material part thereof, the Inspector shall certify to that effect in writing, and deliver such certificate to the employer of

Discharge of labourer permanently incapacitated.

* The paragraphs quoted have been substituted by the Inland Emigration Act (VII. of 1893), s. 18, for the following sentence, which was originally enacted: "The Inspector shall, from time to time, when visiting the estate, endorse on the labourer's labour-contract, after such inquiry as may be necessary, the number of days so added to the term thereof."

Act I. of 1882. such labourer or his agent; and from the date of such certificate the labour-contract of such labourer shall wholly determine. Every labourer whose labour-contract so determines shall be entitled to receive from his employer such sum, not exceeding three months' wages, as the Inspector may award.

Such sum and any subsistence-allowance mentioned in sections 120 and 121 shall be recoverable as if they were arrears of wages.

F.—Accommodation for Labourers.

House-accommodation, water-supply, and sanitary arrangements to be provided.

123. Every employer shall be bound to provide, for the labourers employed on the estate of which he is in charge, such house-accommodation, water-supply, and sanitary arrangements as the Local Government may, by rule, direct.

Supply of food-grain by employer.

124. When the food-grain commonly used by any class of labourers is not procurable by such labourers at reasonable prices in the local markets near the estate on which such labourers are employed, the employer of such labourers shall be bound to supply them with such grain at a reasonable price. The Local Government may, by notification in the official Gazette, determine, either generally, or for each district or part of a district, what shall, for the purposes of this section, be deemed to be a reasonable price.

Provisions for rationing.

125. Subject to any rules which may be made by the Local Government in this behalf, any Inspector may, by order in writing,—

(*a*) direct that, on any specified estate within the local limits of his jurisdiction, all the labourers or any specified class of labourers shall be furnished by their employer with rations, cooked or uncooked, on such scale, for such period, not exceeding three months from the date of their arrival on the estate, as may be specified in such order;

(*b*) exempt any specified labourer from the effect of any such general order if he is satisfied that such labourer is able to earn a full wage, and desires to provide himself with proper and sufficient food;

(*c*) direct that any specified labourer shall be furnished with rations for any term not exceeding six months, and renew any such order for a like term.

The cost of each labourer's ration furnished to him in accordance with any order made under this section shall be calculated at current rates as determined by the Inspector, and shall be deducted from any wages earned by the labourer during the period for which such order is in force.

Provision for hospital-accommodation and medical attendance.

126. If any employer does not, in the opinion of the Inspector, provide such hospital-accommodation in a suitable place available to the labourers employed upon the estate of which he is in charge, or does not make such provision for the medical treatment of such labourers as the Local Government may direct, the Local Government may require such employer to contribute to the support of a central hospital to be established, or to the pay of a Medical Officer to be appointed for the medical treatment of such labourers, such sum, proportionate to the number of labourers so employed, as it thinks fit.

Inquiry whether employer has failed to provide accommodation, &c., as required by the rules.

127. Any Inspector or Assistant Inspector, who is himself a Magistrate, may, with respect to any estate situate within the local limits of his jurisdiction, institute an inquiry whether the employer in charge of such estate has provided for his labourers house-accommodation, water-supply, sanitary arrangements, food-grains, and rations in accordance with the rules prescribed by the Local Government. At the instance of any Inspector or Assistant Inspector a similar inquiry may be made by a Magistrate. Every such inquiry shall be held at some place on the estate to which it relates, or within ten miles of such estate, and shall be conducted and dealt with as if it were an inquiry of a Magistrate under the Code of Criminal Procedure.*

G.—Localities unfit for the Residence of Labourers.

Inspector to report.

128. If, in the opinion of the Inspector, any estate or portion of an estate situate within the local limits of his jurisdiction is at any time, by reason of climate, situation, or condition, unfit for the residence of labourers, or of any particular class of labourers, he shall give notice in writing of such opinion to the Magistrate of the District; and such Magistrate shall forthwith, by order in writing, summon a Committee to inquire into the matter.

Magistrate to summon Committee.

The Magistrate of the District may also of his own motion summon such a Committee, if, either from his own observation or upon the report of an Inspector, Magistrate, or Medical Officer, he is of opinion that any estate or portion of an estate is, for any of the reasons aforesaid, unfit for the residence of labourers or of any particular class of labourers.†

Such Committee shall consist of the Magistrate, the Inspector, the Medical Officer of the district, and one or more employers of labourers, when such employers are available.

If the Magistrate is unable to procure the service on such Committee of any employer of labourers, he may, with the previous sanction of the Commissioner of the division, appoint one or more persons qualified to serve on such Committee.

Local Government may order Committee.

128A.‡ If it appears to the Local Government, upon the report of an Inspector, Magistrate, or Medical Officer,—

(*a*) that any estate or portion of an estate is, for any of the reasons given in the last preceding section, unfit for the residence of labourers or of any particular class of labourers, or

(*b*) that the percentage of mortality of labourers or of any particular class of labourers employed on any estate or on any portion of an estate is such as would justify the institution of an inquiry by a medical officer under section 130 of this Act,

the Local Government may direct the Magistrate of the District to summon a Committee under the last preceding section; and the Magistrate of the District shall forthwith proceed to summon a Committee accordingly.

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* See Act X. of 1882, s. 3.

† This paragraph has been inserted by the Inland Emigration Act (VII. of 1893), s. 16.

‡ S. 128A has been inserted by the said Act VII. of 1893, s. 17.

Act I. of 1882.

129. Such Committee shall, as soon as may be, inquire into the healthiness of the estate or portion to which the order appointing the Committee relates, and shall hear and record such information on the subject as the owner of such estate or portion, or the employer in charge thereof, or the Inspector, may desire to place before it.

Proceedings of Committee.

If such Committee or the majority thereof is of opinion that such estate or portion or any part of such estate or portion is unfit for the residence of labourers generally, or of any particular class of labourers, it shall record a finding to that effect.

If Committee finds estate unfit, labour-contract to be void as regards such estate.

When such finding has been recorded, no labourer, or no labourer of the particular class to which such finding relates, as the case may be, shall be bound by any labour-contract to labour on the estate or portion, or part of such estate or portion, as the case may be, which is found unfit for the residence of such labourers.

When any labourer is released under this section from the performance of a labour-contract to labour on any estate, he shall be bound to labour on any other estate belonging to his employer, and situate in the same labour-district; or, where the finding relates only to a portion or part of an estate, on any other portion or part of the same estate.

Labourer bound to labour elsewhere.

Where the finding relates to the whole of any estate, and the employer has no other estate in the same labour-district on which the labourer may be employed, the Inspector shall cancel the labour-contract of such labourer, and shall thereupon make an endorsement that it has been cancelled on the labourer's copy of the contract, or, if such copy be not forthcoming, shall give to the labourer a certificate to that effect.*

129A.† The Local Government may call for the proceedings of any Committee summoned under section 128 or section 128A of this Act, and if the finding of such Committee is not unanimous, the Local Government may record any finding thereon which such Committee was competent to record, and such finding shall have the same effect as the finding of a Committee under section 129.

Local Government may pass orders on proceedings of Committee.

130. Whenever it appears to the Local Government "or the Magistrate of the District"‡ that the number of labourers employed on an estate who have died thereon, or on any portion thereof, during the last preceding twelve months, or that the average annual number of labourers employed on an estate who have died thereon, or on any portion thereof, during the last preceding three years, bears a larger proportion to the whole number of labourers employed thereon during such period of twelve months or three years, as the case may be, than seven per centum, the Local Government "or the Magistrate of the District"‡ may direct the Civil Medical Officer of

Local Government how to proceed if mortality in past year exceeds seven per cent., or if the average mortality for three years exceeds seven per cent.

Matters to be inquired into.

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* This paragraph has been added by the Inland Emigration Act (VII. of 1893), s. 18.

† S. 129A has been inserted by the said Act VII. of 1893, s. 19.

‡ In s. 130, the words quoted have been inserted by the said Act VII. of 1893, s. 20.

the district or other qualified Medical Officer to inquire into and report on the following matters:— Act I. of 1882.

(*a*) the cause or causes of such mortality;

(*b*) the want (if any) of due care or precaution, and of the adoption of proper and available sanitary measures, on the part of the owner of such estate or portion thereof, or the employer in charge of such estate or portion, causing or contributing to such mortality;

(*c*) the fitness or otherwise of such estate or portion for the residence of labourers:

Provided that, when the mortality among any particular class of labourers employed on an estate or any specified portion of an estate exceeds the percentage specified in this section, the Local Government or Magistrate of the District may direct an inquiry under this section limited to such particular class of labourers.*

Medical Officer to report.

131. Such Medical Officer shall, as soon as may be, inquire into such matters, and shall hear and record such information relating thereto as the owner of such estate or portion, or the employer in charge of the same, or the Inspector, may place before him, and shall visit and inspect such estate or portion, and shall make a report expressing the reasons for his opinion, and transmit the same to the Local Government, together with the information so recorded and the notes of his inspection of such estate or portion.

Local Government may declare estate unfit for residence.

Effect of declaration.

132. If the Local Government, after perusal and consideration of the said report, information, and notes, is of opinion that such mortality was caused by the want, on the part of the owner of such estate or portion, or the employer in charge of the same, of due care or precaution, or of the adoption of proper and available sanitary measures, "or that such estate or portion is"† unfit for the residence of labourers, "or of any particular class of labourers, it may make a declaration in writing to that effect."‡ Such declaration of the Local Government shall have the same effect as the finding of a Committee under section 129.

Power to certify fitness of estate or portion found or declared to be unfit.

133.§ If it at any time appears to the Inspector that any estate or smaller area, which has been found or declared under any of the preceding provisions to be unfit for the residence of labourers or of any particular class of labourers, has become fit for the residence of such labourers or class of labourers, as the case may be, he shall, with the previous sanction of the Magistrate of the District in which such estate or area is situate, give a certificate to that effect signed by him. Thereupon all such labourers as are mentioned or referred to in the last paragraph of section 129, and whose contracts have not been cancelled by the Inspector under that section, shall again be bound to labour on the estate or area, as the case may be, to which the certificate relates, for the unexpired periods (if any) of their respective contracts.

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* This proviso has been added by the Inland Emigration Act (VII. of 1893), s. 20.

† The words quoted have been substituted for the words, "and that such estate or portion is thereby rendered," by the said Act VII. of 1893, s. 21.

‡ The words quoted have been substituted for the words, "it may declare in writing that such estate or portion is unfit for the residence of labourers," by the said Act VII. of 1893, s. 21.

§ S. 133 has been substituted for the original by the said Act VII. of 1893, s. 22.

Act I. of 1882.

H.—Complaints made by Labourers.

134. If any labourer states to his employer, or any person acting on behalf of his employer, that he desires to make a complaint to the Inspector or to any Magistrate of personal ill-usage, or breach, on the part of his employer or such person, of any provisions of this Act, or of any rule of the Local Government made hereunder, the person to whom such statement is made shall forthwith send such labourer to the Inspector or Magistrate within the local limits of whose jurisdiction the estate wherein he is employed is situate :

If labourer wishes to complain of personal ill-usage or breach of Act, employer to send him to Inspector or Magistrate.

Provided that, if more than ten labourers at any one time so state their desire to make such a complaint, the person to whom the statement is made may, instead of sending such labourers to such Inspector or Magistrate, give him notice in writing of their complaint.

135. Whenever any such complaint is made to an Inspector or Magistrate or whenever any Inspector or Magistrate receives notice in writing of any such complaint, or has other reasonable grounds for believing that any employer or person acting on his behalf has personally ill-used, or committed any breach mentioned in section 134 in respect of, any labourer, such Inspector or Magistrate shall, as soon as may be, proceed to some place not more than ten miles from the principal place of business of such employer situate within the local limits of his jurisdiction, and inquire into the matter complained of :

Inspector or Magistrate how to proceed if complaint is made to him, or if he has reason to believe that there is ground for a complaint.

Provided that, if the place in which an Inspector or Magistrate has reasonable grounds for believing that such ill-usage or breach has been committed is situate beyond the local limits of his jurisdiction, he shall, instead of inquiring into the matter himself, forthwith send information thereof in writing to the Inspector or Magistrate within the local limits of whose jurisdiction such ill-usage or breach has been committed.

Power to summon witness.

For the purposes of an inquiry under this section, the Inspector or Magistrate may summon and examine any person as a witness.

136. If, upon such inquiry made on the complaint of a labourer, the Inspector or Magistrate is of opinion that the complaint is untrue or frivolous or vexatious, he shall dismiss the complaint, and in such case shall endorse on the employer's copy of the complainant's labour-contract the number of days during which the complainant has been absent from work in consequence of the inquiry, and the number of days so endorsed shall be added to the period for which the complainant contracted to labour.

If complaint is untrue or frivolous.

Every such endorsement shall be conclusive evidence that the complainant has absented himself from his labour voluntarily and without reasonable cause during the number of days so endorsed.

137. When any complaint is dismissed under section 136, the Inspector or Magistrate may award to the employer any reasonable compensation on account of any expense incurred by him in connection with such complaint, and shall endorse the amount of such compensation on the complainant's copy of the labour-contract. The complainant shall be bound to pay the amount so awarded ; and in default of

Award of compensation to employer.

such payment, his labour-contract shall not be deemed to have determined until he has worked off such amount at the rate of one day's labour for each four annas of such amount. Act I. of 1882.

If on inquiry there is sufficient ground for proceeding.

138. If, upon such inquiry by a Magistrate, or by an Inspector who is a Magistrate, such Magistrate or Inspector is of opinion that there is sufficient ground for proceeding with the case, he shall dispose of the same according to law. If the Inspector is not a Magistrate, and is of such opinion, he shall, without delay, send the complainant and his witnesses (if any) to the nearest Magistrate; and such Magistrate shall thereupon dispose of the case according to law.

Recovery of arrears of wages.

Compensation may be given.

139. If, upon the complaint of any labourer, it is proved to the satisfaction of a Magistrate that the wages of such labourer are in arrear for two months, or if the wages of any person whose labour-contract has determined are proved to the satisfaction of a Magistrate to have been withheld for any period after such determination, the Magistrate may award to such labourer or person the amount which appears to be then due to him; and also, by way of compensation, such further sum, not exceeding that amount, as to such Magistrate seems just; and, in case of default in payment of the amount so awarded, the Magistrate shall levy such amount by distress and sale of any moveable property belonging to the employer of such labourer or person.

Power to cancel contract on conviction of employer,

140. Whenever it is proved to the satisfaction of a Magistrate—

(*a*) that any employer, or any person placed by him in authority over any labourer, has been convicted of any offence causing injury to the person, or loss or damage to the property of such labourer, and, under the Code of Criminal Procedure,* triable exclusively by the Court of Session, or

(*b*) that any employer, or other person as aforesaid, has been twice convicted of any such offence against such labourer, and under the said Code triable by a Magistrate, or

(*c*) that the wages of any labourer are in arrear to an amount exceeding the whole of such labourer's wages for four months, or

or if wages are in arrear for more than four months,

(*d*) that any labourer has been compelled by his employer, or by any person placed by his employer in authority over him, to perform any labour while he was unfit for it, or has been subjected to ill-usage by his employer or any such person,

or if ill-usage is proved.

such Magistrate may, if he thinks fit, on the application of the labourer aggrieved, cancel the labour-contract of such labourer, and award to him compensation not exceeding thirty rupees.

Every such cancelment shall be certified by the Magistrate on the back of the labourer's copy of the labour-contract, or, if the same be not forthcoming, by writing under the Magistrate's hand delivered to the labourer.

Power to cancel contract of labourer related to labourer whose contract is cancelled or determined.

140A.† When the labour-contract of any labourer is or has been cancelled or determined under section 111A, 111B, 122, or 140, the Inspector or Magistrate, as the case may be, may, at his discretion, and on the application of the labourers concerned, cancel the labour-

* See Act X. of 1882, s. 3.

† S. 140A has been inserted by the Inland Emigration Act (VII. of 1893), s. 23.

Act I. of 1882.

contract of any labourer employed on any estate belonging to the same employer being a wife, husband, father, mother, son, or daughter of the labourer whose labour-contract is or has been so cancelled or determined.

I.—Determination of Labour-contract.

141. Whenever a labour-contract determines, the employer shall endorse on the labourer's copy of the contract the fact of such determination, or, if such copy be not forthcoming, shall give to the labourer a certificate of such determination; and, if the employer refuses or neglects to do so, the Inspector may, on application by the labourer, make such endorsement, or give such certificate.

Endorsement of determination on labour-contract.

The employer shall give to the Inspector notice in writing of such determination within one month from the date thereof.

142. If any labourer is able and desirous to redeem the unexpired term of his labour-contract, or of the labour-contract of any member of his family, by payment of a sum equivalent to the value of such unexpired term, such labourer may require his employer to take him, or allow him to go, before the Inspector within the local limits of whose jurisdiction he may be employed; and, on his depositing such sum with such Inspector, the Inspector shall give notice to the employer that the labourer requires him, within one week, to show cause why the labourer, the unexpired term of whose contract is proposed to be redeemed, should not be released from his contract. If no sufficient cause is shown, the Inspector shall require such labourer's copy of the contract to be produced, and, on production thereof, shall endorse thereon a certificate that he has been released under this section from such contract, or, if such copy be not forthcoming, shall deliver to the labourer a certificate under his hand to that effect; and shall in either case hold the sum so deposited to the credit of the employer of such labourer.

Power to redeem labour-contract.

The value of the unexpired term of a labour-contract shall, for the purposes of this section, be deemed to be the aggregate amount of one rupee for every month of the unexpired portion of the first year, of three rupees for every such month of the second year, and of five rupees for every such month of the "third and fourth years,"* of the original term of the contract.

Value of unexpired term of labour-contract.

142A.† In any case in which the contract of a labourer determines at a different time from that of any other labourer who is the wife or husband of such labourer, the Inspector or Magistrate may, on the joint application of such labourers, equalize the terms of their respective contracts and may, for this purpose, add to the term of the contract which expires first, and deduct from the term of the contract which expires last, in such proportions as may appear to him to be equitable.

Power to equalize terms of contract in case of husband and wife.

Every such addition or deduction from the term of any contract shall be certified by such Inspector or Magistrate on the back of both the employer's and the labourer's copies of the contract, or, if the same be not forthcoming, by writing under the Inspector or Magistrate's hand, copies of which shall be delivered to the employer and the labourer.

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* The words quoted have been substituted, for the words "third, fourth, and fifth years," by the Inland Emigration Act (VII. of 1893), s. 24.

† Ss. 142A, 142B, 142C, 142D, 142E, and 142F have been inserted by the said Act VII. of 1893, s. 25.

J.—Repatriation of Labourers and others.

Act I. of 1882.

142B.* If any labourer, not being a native of the labour-districts, whose contract is determined under section 122, desires to be sent back to his native district, the Inspector may, instead of awarding a sum as receivable by such labourer from his employer as provided by that section, order the employer to deposit such amount, whether in excess of the three months' wages awardable under that section or otherwise, as shall, in the Inspector's opinion, be sufficient to cover the entire expenses of sending the labourer to such district. Such amount shall be deposited by the employer in the Inspector's office, and shall be expended by the Inspector in sending the labourer back to his native district.

Repatriation of labourers whose contract is determined under section 122.

On failure of the employer to deposit such amount within twenty-four hours in accordance with any such order, the Inspector may pay the same, and any amount so paid shall be recoverable from the employer as if it were an arrear of wages.

142C.* If any person, being a native of India, but not being a labourer, who has emigrated from his native district to a labour-district for the purpose of labouring for hire in any estate situate therein, or being a dependent of any person who has so emigrated, has no means of subsistence, and is, in the opinion of the Inspector or Magistrate, permanently incapacitated from earning his livelihood in a labour-district, the Inspector or Magistrate may, on the application of such person, send him back, together with his dependents (if any), to his native district, and may, subject to the control of the Local Government, charge the expenses incurred in so doing to the Inland Labour Transport Fund.

Repatriation of immigrants not under contract who are physically incapacitated.

142D.* Subject to any orders which the Local Government may issue in this behalf, the Inspector or Magistrate may send back to his native district any labourer, together with his dependents (if any), whose contract has been cancelled under section 111A or 111B on the ground of coercion, undue influence, fraud, or misrepresentation, or of any irregularity in connection with his recruitment or the execution of his contract, and may recover, as if it were an arrear of wages, from the employer on whose estate such labourer was under contract to labour, the whole or any part of the expenses incurred in so sending him back.

Repatriation of labourers wrongfully recruited.

142E.* If it appears to the Inspector or Magistrate, on complaint made before him or otherwise, that there is reason to suppose that any native of India, not being a labourer, has been induced, by any coercion, undue influence, fraud, or misrepresentation, to emigrate to a labour-district, the Inspector or Magistrate shall call upon the employer on whose behalf such person was made or induced to emigrate, or to whose estate he is being or has been conveyed, or, if the employer cannot be communicated with without undue delay, upon his agent or any one accompanying such person, or conveying him to any labour-district or estate, to appear before the Inspector or Magistrate, and show cause why such person should not be sent back to his native district.

Repatriation of persons not under contract wrongfully recruited.

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* Ss. 142A, 142B, 142C, 142D, 142E and 142F have been inserted by the said Act VII. of 1893, s. 25.

Act I. of 1882.

If the Inspector or Magistrate is of opinion, after such enquiry as he thinks sufficient, that such person was engaged or compelled or induced to emigrate by any such coercion, undue influence, fraud, or misrepresentation as would justify his being sent back to his native district, the Inspector or Magistrate shall record a finding to this effect, and shall send such person, if he so desires, together with any other persons dependent on him (if any), back to his native district.

Subject to any orders which the Local Government may issue in this behalf, the whole or any part of the amount expended in sending a person back to his native district under this section may be recovered as if it were an arrear of wages from the employer on whose behalf such person was induced to emigrate, or to whose estate he was being or had been conveyed; or, if the employer is not known, or if there is no such employer, by distress and sale of any moveable property belonging to the person accompanying such person, or conveying him, to any labour-district or estate.

142F.* In any case in which a labourer or other person is sent back to his native district under the provisions of section 142D or section 142E, the Inspector or Magistrate may provide an escort, or make such other arrangements as may appear to him to be necessary for ensuring that such labourer or person is actually conveyed to such district. Any expenditure incurred in providing such escort, or making such arrangements, may be recovered as part of the amount expended in sending such labourer or other person back to his native district.

Arrangements may be made for escorting persons ordered to be repatriated.

CHAPTER VII.

SUPPLEMENTARY POWERS.

143. "In addition to any other power to make rules conferred by this Act,"† the Local Government may make rules consistent with this Act—

Power of the Local Government to make rules.

(*a*) to define and regulate the powers and duties of the several officers appointed by it under this Act;

(*b*) to prescribe what returns and reports shall be made under this Act by any such officers or by any contractors or local agents within the territories under its administration, and the form in which they shall be respectively so made;

(*c*) to prescribe the forms of all registers, licenses, certificates, and notices required under this Act with respect to the territories under its administration;

(*d*) to prescribe the particulars to be registered by a Registering Officer in respect of each person who is brought before him in any district under its administration for registration as a labourer or dependent;

(*e*) to prescribe the fees to be paid for any license granted under this Act by any officer appointed by it, and for the registration of labourers or dependents in any district under its administration;

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* Ss. 142A, 142B, 142C, 142D, 142E, and 142F have been inserted by the Inland Emigration Act (VII. of 1893), s. 25.

† The words quoted have been prefixed by the said Act VII. of 1893, s. 26.

(*f*) to prescribe the conditions upon which any officer appointed by it may grant licenses to masters of vessels carrying passengers to any labour-district; to provide for the ventilation, cleanliness, and water-supply of such vessels in respect of which licenses are granted hereunder by any such officer; and to prescribe the lists, returns, and reports to be kept and submitted by the masters of such vessels; Act I. of 1882.

(*g*) to prescribe the description, quantity, and quality of provisions, medical drugs, and other stores to be taken on board such vessels carrying labourers when such vessels are within the territories under its administration, and the daily allowance to be issued to each labourer and dependent during the journey through such territories; to prescribe the number of officers, cooks, and other servants to be carried on board such vessels, and to provide generally for the accommodation of labourers and their dependents on such vessels;

(*h*) to provide for the accommodation, food, clothing, and medical treatment of all labourers and dependents detained on account of sickness by order of a Magistrate at any place within any district under its administration;

(*i*) to declare the routes through the territories under its administration by which labourers and their dependents shall not travel to the labour-districts;

(*j*) to prescribe the house-accommodation, water-supply, sanitary arrangements, and amount and kind of food-grains to be provided by employers for their labourers, and to regulate the rations to be supplied to labourers under this Act in the labour-districts under its administration;

(*k*) to provide for the hospital-accommodation and medical treatment of labourers in such labour-districts, and to prescribe the nature, quality, and quantity of medical drugs and other stores to be provided for such labourers;

(*l*) to provide for the management and regulation of contractors' depôts and of hospital-depôts situate within the territories under its administration, and for the support and medical treatment of labourers and their dependents passing through such depôts;

(*m*) to prescribe the clothing to be supplied to labourers and their dependents while proceeding to the labour-districts through the territories under its administration; and, generally,

(*n*) to give effect to the provisions of this Act within the districts subject to its administration.

Special power of the Lieutenant-Governor of Bengal and Chief Commissioner of Assam.

144. The Lieutenant-Governor of Bengal and the Chief Commissioner of Assam may further respectively make rules consistent with this Act to provide for the detention and inspection of vessels in respect of which licenses are granted hereunder, and passengers, being natives of India, carried thereon while in transit through the territories respectively administered by them.

Power to prescribe penalties.

145. The Local Government may, subject to the control of the Governor-General in Council, by rule prescribe as penalty for the infringement of any rule made by it hereunder, or of any provision of this Act for a breach of which a penalty is not expressly provided, a fine which may extend to five hundred rupees.

Act I. of 1882.

All rules made under this Act by the Local Government shall be published in the local official Gazette, and shall thereupon have the force of law.

Publication of rules.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Inducing native to emigrate in contravention of a notification under section 5.

146. Whoever knowingly induces or assists, or attempts to induce or assist, any native of India to emigrate in contravention of a notification published under section 5, shall be punished with fine which may extend to fifty rupees for every such native whom he so induces or assists, or attempts to induce or assist.

Recruiter removing, &c., unregistered persons.

147. Whoever, being a recruiter,

removes, or attempts to remove, any person to a depôt before he has been registered under section 32, or induces or attempts to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Registering Officer before whom such person ought to be brought under section 31, or aids or attempts to aid such person in going to a depôt, or in leaving any such local limits, before he has been so registered,

or induces or attempts to induce any person who has been so registered to proceed to any place other than the depôt which has been established by the contractor on whose behalf such recruiter is licensed, or conveys or attempts to convey him to such place,

shall be punished, in respect of every such person, with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

Recruiter not supplying proper food, &c.

148. Whoever, being a recruiter or a person deputed by him to accompany labourers to a depôt, fails to provide any labourer or any dependent whom he accompanies on the journey to the depôt with proper and sufficient food and lodging, or otherwise ill-treats such labourer or dependent on such journey, shall be punished with fine which may extend to fifty rupees; and, in default of payment of such fine within twenty-four hours, with imprisonment for a term which may extend to one month.

The convicting Magistrate may award the whole or any portion of any fine levied under this section as compensation to the labourer in respect of whom, or of whose dependent, such failure or ill-treatment has occurred.

Labourer refusing without reasonable cause to execute contract at depôt.

149. Any labourer engaged by a recruiter, and who, having been registered under section 32, without reasonable cause refuses or neglects, when at the depôt, to execute, within thirty days after his arrival at such depôt, a labour-contract in conformity with the terms made known to him when he was registered, shall be punished with fine which may extend to the amount of the expense incurred in registering him, and conveying him to the depôt, and maintaining him therein; and, in default of payment of such fine, with imprisonment for a term which may extend to one month.

Any labourer so punished may be forthwith discharged from the depôt.

Every fine levied under this section shall be paid to the contractor, sub-contractor, or recruiter by whom such expense was incurred. Act I. of 1882.

Labourer refusing to execute contract with garden-sardar.

150. Any labourer registered under section 66, who, without reasonable cause, refuses or neglects to execute, within fifteen days from the day on which he was so registered, a labour-contract in conformity with the terms made known to him when he was registered, shall be punished with fine which may extend to twenty rupees, or to the amount of the expense reasonably incurred by the garden-sardar in procuring his registration, whichever amount is least.

Every fine levied under this section shall be paid to the garden-sardar by whom such expense was incurred.

Garden-sardar failing to report himself, &c.

151.* Whoever, being a garden-sardar,

fails, within fourteen days after his arrival in the local area within which he is authorized to enter into contracts under this Act, to report himself to the local agent (if any) specified in his certificate, or

fails without sufficient cause to return to his employer within the time specified in his certificate, or

fails to account for the money advanced to him by his employer for the purpose of engaging labourers, and

whoever, being a garden-sardar or a person appointed, under section 50 or section 73, to accompany labourers to a labour-district, wilfully abandons any labourer or his dependent on the way to such district, or

removes or attempts to remove any person to a labour-district before he has been registered as provided by section 66, or

induces or attempts to induce any person to go to a labour-district or to leave the local area specified in the certificate of such sardar before he has been so registered, or aids or attempts to aid him in proceeding to a labour-district, or in leaving any such local area before he has been so registered,

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Garden-sardar making over labourers to contractors, or committing like offences.

152.† Any garden-sardar who makes over to any contractor, sub-contractor, or recruiter, or to the garden-sardar or local agent of any employer other than the employer by whom his certificate was granted, or, without authority from his employer, to any other person, any persons whom he has engaged or intends to engage as labourers, or

places any such person in a contractor's depôt or in the place of accommodation provided by a recruiter in accordance with the provisions of section 27, or

allows any persons engaged as labourers by any contractor or sub-contractor or recruiter to share the accommodation provided by him under section 57,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both; and his certificate may be impounded by the convicting Magistrate.

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* S. 151 has been substituted for the original by the Inland Emigration Act (VII. of 1893), s. 27.

† S. 152 has been substituted for the original by the said Act VII. of 1893, s. 28.

Act I. of 1882.

Any Magistrate impounding a certificate under this section shall send it for cancellation to the Magistrate by whom it was countersigned.

Garden-sardar failing to comply with instructions endorsed on way-bill.

153. Any garden-sardar or person appointed by him as provided by section 73, who accompanies labourers to the labour-districts, and fails to present a way-bill as required by section 76, or to carry out any of the instructions entered in such way-bill, shall be punished with fine which may extend to twenty rupees.

Master receiving native passengers on board in contravention of Act.

154. Any master not licensed under section 89, who, in contravention of section 87, knowingly receives on board his vessel more than twenty passengers, being natives of India, and

any master licensed as aforesaid, who knowingly receives on board his vessel any such passengers in excess of the number specified in his license, or in any order of an Embarkation Agent under section 91, for the purpose of transporting them to a labour-district,

shall be punished with fine which may extend to two hundred rupees for each passenger so received.

Nothing in this section applies to the master of a vessel exempted under section 87.

Fraudulent alteration of vessel after grant of license.

155. Any master licensed under section 89, who, with intent to defraud, does, or suffers to be done, any act or thing whereby the state of his vessel is altered, so that such vessel is unfit for the accommodation of the number of passengers specified in his license, or in any order made under section 91 by an Embarkation Agent, shall be punished with fine which may extend to two hundred rupees.

Master not complying with section 94.

156. Any master licensed as aforesaid, who proceeds on his voyage with his vessel carrying labourers without having complied with the provisions of section 94, shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months.

Master not complying with order under section 96.

157. Any master licensed as aforesaid, who fails to comply with an order of an Embarkation Agent made under section 96, shall be punished with fine which may extend to two hundred rupees for each day during which he fails to comply with such order after the day on which the order was received by him.

Master permitting labourer to leave vessel contrary to section 98.

158. Any master licensed as aforesaid, causing or permitting a labourer finally to leave his vessel contrary to the provisions of section 98, shall be punished with fine which may extend to two hundred rupees for each labourer so leaving his vessel.

Master wilfully omitting to stop vessel at certain places.

159. Any master licensed as aforesaid, who wilfully omits to comply with the provisions of section 99, shall be punished with fine which may extend to two hundred rupees.

Person disobeying Magistrate's order as to communication between vessel and land.

160. Any person who disobeys any order made under section 101 by a Magistrate shall be punished with fine which may extend to two hundred rupees.

161. Any master licensed as aforesaid, or any Medical Officer in charge of his vessel, who wilfully omits or neglects to obey, or enforce on board of such vessel, any provision of this Act or any rule made hereunder, shall be punished with fine which may extend to two hundred rupees.

Master or Medical Officer disobeying or neglecting to enforce rules.

162. Any labourer, who, having been registered under section 32 or section 66, deserts while on his journey from the district in which he has been so registered to a labour-district, or

Labourer deserting, &c., after registration.

without reasonable cause refuses or neglects to proceed from the district in which he has been so registered, or to embark in any vessel when called upon to do so by an Embarkation Agent,

shall be punished with imprisonment for a term which may extend to three months.

163. Any employer who refuses or wilfully omits to keep such registers, or to make such periodical returns in writing to the Inspector, as may be prescribed by any rule made hereunder, or who knowingly keeps an incorrect register, or makes an incorrect return, or who wilfully omits to prepare, file, or stick up a schedule as required by section 115, shall be punished with fine which may extend to two hundred rupees.

Employer refusing or omitting to keep registers, &c.

164. Any employer, or any person acting under his orders or on his behalf, who wilfully obstructs any entry, inspection, or inquiry, "or omits to comply with any requisition,"* made under section 114, shall, for every such offence, be punished with fine which may extend to two hundred rupees.

Employer or other person obstructing inspection under section 114.

165 Any employer, or any person acting under his orders or on his behalf, who compels any labourer to perform any labour, knowing that he is at the time unfit to perform such labour, shall be punished with fine which may extend to two hundred rupees.

Employer or other person compelling labourer to perform labour for which he is unfit.

166. Any person who buys the rations which have been furnished under section 125 to any labourer, and any labourer who sells any such rations; shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

Persons buying labourer's rations.

167. Any employer who wilfully omits to provide house-accommodation, water-supply, sanitary arrangements, food-grains, or rations in accordance with the provisions of this Act, or any rule made hereunder, shall be punished with fine which may extend to five hundred rupees; and the convicting Magistrate may order him to comply with such provisions within a reasonable time to be fixed in the order.

Employer omitting to provide house accommodation, &c.

If the employer wilfully omits to comply with such order within the time so fixed, he shall be punished with fine which may extend to one hundred rupees for each day during which such omission continues.

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* The words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 29.

Act I. of 1882.

If the employer fails to pay the last-mentioned fine, the person on whose account he has been acting shall be liable to pay such fine.

Employer neglecting to provide hospital-accommodation.

168. Any employer who fails to provide such hospital-accommodation for, or make such provision for the medical care and treatment of, labourers, as is required by any rule made under this Act, shall be punished with fine which may extend to two hundred rupees for each week during which such default continues.

Employer causing labourer to reside on estate declared unfit.

169. Where any estate or portion thereof has been found under section 129, or declared under section 132, unfit for the residence of labourers or any class of labourers, as the case may be, every employer who, until a certificate has been given under section 133, causes or permits such labourers or class of labourers to reside or labour upon such estate or portion, shall be punished with fine which may extend to two hundred rupees.

Unlawful absence from work.

170. Every employer may, on or before the fifteenth day of each month, send to the inspector a statement in writing containing the names of all or any of his labourers who, voluntarily and without reasonable cause, absented themselves from labour during the preceding month, and specifying the periods of such absence. When any employer sends any such statement in writing, he shall, at the same time, notify to each labourer concerned the fact that he has done so.

Any Inspector who receives any such statement shall, "if the employer so desires,"* when next visiting the estate on which the labourers to whom such statement relates are employed, inquire into each such case of absence, in the presence of the labourer concerned, and, if satisfied that the labourer has, voluntarily and without reasonable cause, absented himself, shall, unless the labourer consents to forfeit to his employer the sum of four annas for each such day of absence, endorse such days of absence on the labour-contract of such labourer, and add them to the term of such contract.

The Inspector may also at any time other than that of his visit to the estate, on the application of either the employer or the labourer, after due inquiry, endorse such days of absence on, and add them to the term of, the labour-contract: Provided that an employer who omits to apply for the endorsement of such days on any labourer's labour-contract when the Inspector is actually visiting the estate shall be debarred, in the absence of sufficient reasons to the contrary shown to the satisfaction of the Inspector, from applying afterwards for such endorsement, so far as days of absence reported in statements sent to the Inspector previous to the date of his last visit are concerned.†

Labourer absent without cause.

171. Any labourer, who, voluntarily and without reasonable cause, absents himself from his labour for more than seven consecutive days, or for more than seven days in any one month, shall be liable to forfeit his wages for the period of such absence, and to pay to his employer a sum not exceeding four annas for each such day of absence, and shall also be liable to imprisonment for a term which may extend to fourteen days; and, in case such absence has extended to twenty days in any two consecutive months, to imprisonment for a term which may extend to one month.

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* The words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 30.

† This paragraph has been added by the Inland Emigration Act (VII. of 1893), s. 30.

Explanation.—Ill-treatment of such labourer by his employer, or failure of the employer to fulfil any condition of the labour-contract binding on the employer, is reasonable cause within the meaning of section 170 or this section. Act I. of 1882.

171A.* Every employer may, on or before the fifteenth day of each month, send to the Inspector a statement in writing, in such form as the Local Government may prescribe, containing the names of all or any of his labourers who have deserted from his service during the preceding month, or who, having deserted at any previous time, have been absent during the preceding month, or who, having deserted during the month or previously, have been arrested or have returned to his service during the preceding month. Statement of deserters.

172. If any labourer deserts from his employer's service, such employer, or any person acting on his behalf, may, without a warrant, and without the assistance of any police-officer, arrest such labourer wherever he may be found: Deserter may be apprehended without warrant.

Provided that, if such labourer be found within five miles of the place where a Magistrate resides, or in the service of another employer, he shall not be arrested without warrant.

Every police-officer shall assist in arresting any such labourer if so required by the employer or person acting on his behalf.

Whoever arrests a labourer under this section shall, without delay, take him to the police-station nearest to the place of the arrest; and, if he fails to do so, shall be punished with fine which may extend to two hundred rupees.

173† The police-officer in charge of such station shall, on the appearance of the parties, take down in writing the statements of the labourer arrested, and of the person arresting the labourer. Procedure at police-station.

If the labourer admits the contract, and does not claim to be forwarded to a Magistrate, the police-officer may permit the person arresting the labourer to convey him to the estate on which he is under contract to labour, and shall then transmit the statements recorded and a report of his proceedings to the Magistrate within the local limits of whose jurisdiction the police-station is situated.

If the labourer does not admit the contract, or claims to be forwarded to the Magistrate, or if, for any reason, it appears to the police-officer desirable that he should be so forwarded, the police-officer shall forthwith send such labourer, together with the statements recorded as aforesaid and a report of his proceedings, to the Magistrate within the local limits of whose jurisdiction the police-station is situated.

If the estate on which the labourer is under contract to labour is not situate within the local limits of the jurisdiction of the Magistrate referred to in the last two preceding paragraphs, such Magistrate shall forward the statements and report received by him from the police to the Magistrate within the local limits of whose jurisdiction such estate is situate. He shall also, when the labourer has been sent to him by the police, either forward the labourer to, or take security for his appearance before, such Magistrate.

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* S. 171A has been inserted by the Inland Emigration Act (VII. of 1893), s. 31.

† S. 173 has been substituted for the original by the said Act VII. of 1893, s. 32.

Act I. of 1882.

On receipt of such statements and report, the Magistrate, within the local limits of whose jurisdiction such estate lies, may, after making such inquiry as he considers desirable into the case, pass such order in accordance with law as he thinks proper. For the purpose of any such inquiry, such Magistrate may, if he thinks fit, in any case in which the labourer arrested has not been sent to, or appeared before, him, require the labourer to appear before him.

Procedure on complaint of desertion.

174. Whenever an employer or a person acting on his behalf complains to a Magistrate that a labourer has deserted from his employer's service, such Magistrate may, without previously examining the complainant, issue a summons for the attendance of such labourer, or a warrant for his arrest, and fix a day for hearing the complaint.

Punishment for desertion.

175. Every labourer who deserts from his employer's service shall be punished with imprisonment for a term which may extend to one month, "or with fine which may extend to twenty rupees, or with both." For a second conviction for a like offence he shall be punished with imprisonment for a term which may extend to two months, "or with fine which may extend to fifty rupees, or with both." For a third and every subsequent conviction for a like offence he shall be punished with imprisonment for a term which may extend to three months, "or with fine which may extend to one hundred rupees, or with both."*

Compensation for wrongful arrest.

176. If it appears to the Magistrate trying a labourer for deserting from his employer's service that such labourer was arrested without sufficient cause, such Magistrate may impose a fine, which may extend to fifty rupees, on the employer or person acting on his behalf by whom, or at whose instance, such labourer was arrested. The Magistrate may in his sentence direct that the whole or any part of such fine be paid by way of compensation to the labourer so arrested.

Cancellation of contract by desertion.

177. Whenever any labourer has actually suffered imprisonment, for terms amounting in the whole to six months, for desertion from his employer's service, the Inspector shall cancel the labour-contract of such labourer, and shall endorse on his copy of the contract a certificate of such cancellation, or, if such copy be not forthcoming, he shall give to the labourer a written certificate of such cancellation.

Penalty for drunkenness or neglect of sanitary regulations.

178. Any labourer guilty of habitual drunkenness, or wilfully disregarding any sanitary regulation approved by the Inspector, and duly notified for the guidance of the labourers on the estate on which such labourer is employed, shall be punished with fine which may extend to five rupees, or with imprisonment for a term which may extend to one week.

Portion of sentence may be cancelled on application of employer.

179. The employer of any labourer sentenced to imprisonment for any offence under this Act, or any person authorized to act in this behalf for such employer, may apply to the Magistrate, at any time previous to the expiry of such sentence, that such labourer be made over to him for the purpose of completing his labour-contract. On such application being made, the Magistrate may, if he thinks fit, order that such labourer be made over or forwarded to his employer;

* In s. 175 the words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 33.

and in that case such Magistrate shall cancel the remainder of the sentence passed on the labourer, and shall endorse on his copy of the labour-contract a certificate of such cancellation, or, if such copy be not forthcoming, shall give him a written certificate of such cancellation. Act I. of 1882.

Nothing in this section shall be deemed to affect the provisions of section 177.

180. Every employer who obtains an order of a Magistrate for the making over or forwarding of any labourer shall be liable to defray the expense (if any) incurred in such making over or forwarding, and shall, before the order is issued, deposit with the Magistrate a sum sufficient in the Magistrate's opinion to defray such expense.

Expense of forwarding labourer to be paid by employer.

181. On the expiry of any sentence of imprisonment for any offence under this Act, the Magistrate shall, subject to the provisions of section 177, make over such labourer to any person appointed on the part of his employer to take charge of him; and no conviction under this Act, or imprisonment under such conviction, shall, save as aforesaid, operate as a release to any labourer from the terms of his labour-contract.

Conviction not to operate as a release.

If no person is present on the part of the employer to take charge of the labourer at the expiry of his sentence, the Magistrate shall forward such labourer to the principal place of business of his employer situate within the local limits of such Magistrate's jurisdiction, and the expense of such forwarding shall be recoverable from such employer as if it were an arrear of land-revenue.

182.* When any labourer is convicted under section 171 of absence from labour, or is sentenced to imprisonment for an offence under this Act, the Magistrate so convicting or sentencing him shall endorse, on the employer's copy of the labour-contract, the period during which such labourer is convicted, under the section aforesaid, of being absent from his labour, or the term for which he is sentenced to imprisonment, or both, as the case may be.

Endorsement on contract of period of unlawful absence or imprisonment for offence against Act.

182A.* When any labourer is convicted under section 175 of desertion from his employer's service, the Magistrate convicting him shall, on the application of the employer or his agent, endorse on the employer's copy of the labour-contract (in addition to the term of imprisonment to which the labourer may be sentenced for such desertion), the period during which the Magistrate finds that the labourer was absent from his labour in contravention of his contract owing to such desertion:

Endorsement on contract of period of desertion or imprisonment for desertion.

Provided that no such endorsement shall be made in any case in which the labour-contract has been cancelled under the provisions of section 177, or in any case in which the original term of the labour-contract has expired on the date of the conviction, and more than three years have elapsed from the date of the labourer's desertion to that of his arrest:

Provided also that the employer has duly reported the particulars of the desertion in the monthly statement provided for in section 171A.

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* Ss. 182, 182A, 182B, and 182C, have been substituted, by the Inland Emigration Act (VII. of 1893), s. 34, for s. 182 as originally enacted.

Act I. of 1882.

182B.* When any labourer is sentenced to imprisonment for any time not exceeding three years for any offence other than an offence under this Act, the Court or Magistrate so sentencing him shall, if the employer or his agent shall so request, endorse on the employer's copy of the labour-contract the period for which the labourer is sentenced to imprisonment, or, if such period exceeds the unexpired term of the labour-contract on the date of the sentence, so much of such period as is equal to such unexpired term.

Endorsement on contract of period of any other imprisonment.

182C.* The periods endorsed under the three last preceding sections shall be added to the term for which the labourer contracted to serve; and such labourer shall not be deemed to have performed his labour-contract till he has served for the term specified therein in addition to the periods so endorsed.

Periods endorsed to be added to term of contract.

183. Whoever, knowing that any labourer is bound by his labour-contract to labour for any employer, voluntarily entices, or attempts to entice, such labourer to leave such employer, or harbours or employs any such labourer who has, in contravention of the terms of his labour-contract, left his employer, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Other person enticing away, harbouring, or employing, labourer under labour-contract.

The convicting Magistrate may, in his discretion, award to the employer with whom such labourer has contracted the whole or any part of any fine levied under this section.

183A.† Whoever, being bound under section 111 to forward any labour-contract to the Inspector, or under section 111B to cause any labourer to appear before the Inspector or Magistrate, wilfully omits or neglects so to forward such labour-contract to the Inspector at or within the time specified, or to cause such labourer to appear before the Inspector or Magistrate within a reasonable time, shall be punished with fine which may extend to two hundred rupees.

Failure to forward contract under section 111, or to cause labourer to appear under section 111B.

184. Whoever, being bound by section 134 to send any labourer before, or to give notice of any complaint to, an Inspector or Magistrate, refuses or neglects so to send such labourer, or to give such notice, shall be punished with fine which may extend to two hundred rupees.

Employer or other person neglecting to send labourer before Magistrate as provided by section 134.

185. Any employer, who—

refuses or wilfully neglects to endorse the labourer's copy of his contract as required by section 141, or

Employer refusing to endorse labour-contract, &c., as required by section 141.

detains a labourer after the determination of his labour-contract, or

fails to give to the Inspector notice in writing of such determination within one month of the date thereof,

shall be punished with fine which may extend to two hundred rupees.

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* Ss. 182, 182A, 182B, and 182C, have been substituted, by the Inland Emigration Act (VII. of 1893), s. 34, for s. 182 as originally enacted.

† S. 183A has been inserted by the said Act VII. of 1893, s. 35.

Employer or other person neglecting to comply with request of labourer wishing to redeem unexpired term.

186. Any employer or person acting for an employer who refuses or neglects to comply with the request of a labourer made under section 142 shall be punished with fine which may extend to two hundred rupees.

Abetment.

187. Whoever abets, within the meaning of the Indian Penal Code, any offence against this Act or any rule made hereunder, shall be punished with the punishment provided for such offence.

Place of trial for offences.

188. Whoever commits any offence against this Act or any rule made hereunder shall be triable for such offence in any place in which he may be found, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

189. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made hereunder, or from being liable under any other law to any penalty higher than that provided by this Act for such offence:

Provided that no person shall be punished twice for the same offence.

CHAPTER IX.

MISCELLANEOUS.

Wages due under labour-contract a charge upon estate.

190. All arrears of wages due under any labour-contract shall be a charge upon the estate upon which the labourer to whom such labour-contract relates has been engaged to labour, or, if he has engaged to labour upon any of several estates managed by the same employer, shall be a charge upon that one of such estates upon which such labourer for the time being actually labours.

Owner of estate for time being has all rights and remedies in respect of labour-contracts charged on it.

191. Whenever an estate on which any labourer has under this Act contracted to labour is transferred by act of parties or operation of law, or devolves, the person to whom it is so transferred, or on whom it devolves, shall be bound by the labour-contract of such labourer in the same manner and to the same extent as the person by or from whom it is transferred or devolves would have been bound by such contract, and shall have the same rights and remedies under such contract as such person would have had thereunder, if the estate had not been transferred or had not devolved.

Determination of ownership determines liability.

No person who has ceased to be the owner of the estate upon which any labourer has under this Act contracted to labour shall be liable in respect of any breach of the labour-contract of such labourer which occurs after he has ceased to be such owner.

Fines, fees, and rates to be credited to "Inland Labour Transport Fund."

192. Subject to the power of a Magistrate under this Act or the Code of Criminal Procedure* to award fines in whole or in part as compensation to, or for the benefit of, any complainant or other person, the Local Government shall credit all fines, fees, and rates levied and paid under this Act in the territories

* See Act X. of 1882, s. 3.

Act I. of 1882. under its administration to a fund which shall be called the "Inland Labour Transport Fund;" and such fund shall be at the disposal of such Local Government, in such manner as the Government of India may direct, for paying the salaries and allowances of all officers and establishments appointed under this Act by such Local Government and their pensionary and leave-allowances, "for meeting the cost of sending labourers and other persons back to their native districts,"* and generally for defraying the expenses of carrying out the purposes of this Act and the rules of the Local Government made hereunder. The annual surplus accruing in such fund shall be applied to reducing the annual rate of the registration-fees leviable under this Act, and not otherwise.

193. [*Repealed by Act XII. of 1891.*]

194. An Assistant Inspector shall perform all such duties, and exercise all such powers of an Inspector, as he is authorized in writing by the Inspector to perform or exercise.

Duty of Assistant Inspector.

195. All powers conferred by this Act on the Local Government, or on any Superintendent, Medical Inspector, Emigration Agent, or other officer, may be exercised from time to time as occasion requires.

Powers of Local Government and officers exerciseable from time to time.

THE SCHEDULE.

(See section 9.)

FORM OF LABOUR-CONTRACT BETWEEN LABOURER AND EMPLOYER.

This contract, made under the Inland Emigration Act, 1882, between A B (hereinafter called *the labourer*) of the one part, and [1][C D (*agent or local agent or garden-sardar*) on behalf of] *E F* (hereinafter called *the employer*) on the other part, witnesseth that the said [2][*agent or local agent or garden-sardar* on behalf of the said] employer doth hereby promise the said labourer that, if he, the said labourer, do remain and labour[3] on the $\frac{\text{X estate}}{\text{Y estates}}$[4] of his said employer in the labour-district of for the term of years from the date of the execution of this contract, he, the said employer, will, from the date on which the said labourer commences to labour on such $\frac{\text{estate}}{\text{estates}}$, pay or cause to be paid to the said labourer monthly wages at the rate of Rs.[5] for a completed daily task regulated in accordance with the provisions of the said Act, and when such task is not completed, monthly wages calculated at the same rate in proportion to the amount of work actually done, and that during such period he, the said employer, will supply to the said labourer rice at a price of Rs. per maund; and will faithfully comply with all rules regarding house-accommodation, medical treatment, and the supply of food-grains or rations to the said labourer, which the Local Government may, from time to time, prescribe; and this contract further witnesseth that the said labourer doth hereby, in consideration of the aforesaid promise, agree so to remain and labour for the said employer. In witness whereof the said parties to these presents have hereunto set their hands at this day of 18 .

[1] Parts in brackets to be omitted if the contract is made without the intervention of an agent, local agent, or garden-sardar.

[2] State nature of labour, if the labourer is to be required to work under the ground.†

[3] As the case may be.

[4] State rates for various periods of contract.

[*Signature of labourer and of employer or of his agent, local agent, or garden-sardar.*]

* In s. 193 the words quoted have been inserted by the Inland Emigration Act (VII. of 1893), s. 36.

† This marginal note has been inserted by the Inland Emigration Act (VII. of 1893), s. 37 (*1*).

*Form of Description of Labourer.** Act I. of 1882.

Name.	Father's Name.	Age.	Sex.	Caste.	Residence.			Descriptive marks.
					District.	Thana.	Village.	

"[*Endorsement to be filled up by Registering Officer before whom the contract is executed.*]

I hereby certify that, before the said *A B* signed this contract, I personally explained it to him.

Dated at
This day of

Signed ——————
Registering Officer or Inspector or Magistrate.

[*Endorsements on labourer's copy of contract, to be filled up when the contract is determined or cancelled.*]

I hereby certify that the foregoing contract has been determined by efluxion of time.

Dated at
This day of

Signature of Employer or Inspector.

I hereby certify that the foregoing contract has been cancelled under the provisions of section of Act

Dated at
This day of

Signature of Inspector or Magistrate."

* The portion which follows this tabular statement, beginning with the word "Endorsement" to the end, has been substituted for the original by the Inland Emigration Act (VII. of 1893), s. 37 (*a*).

Act II. of 1882.

ACT II. OF 1882.

THE INDIAN TRUSTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH JANUARY 1882.

An Act to define and amend the law relating to Private Trusts and Trustees.

Preamble.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. Commencement.

1. This Act may be called "The Indian Trusts Act, 1882:" and it shall come into force on the first day of March 1882.

Local extent.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam; and the Local Government may, from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *wakf*, or the mutual

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relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private, religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day.

Repeal of enactments.

2. The Statute and Acts mentioned in the schedule hereto annexed shall, to the extent mentioned in the said schedule, be repealed in the territories to which this Act for the time being extends.

Interpretation-clause. "trusts:"

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust:" "trustee:" "beneficiary:" "trust-property:" "beneficial interest:"

the person who reposes or declares the confidence is called the "author of the trust;" the person who accepts the confidence is called the "trustee;" the person for whose benefit the confidence is accepted is called the "beneficiary;" the subject-matter of the trust is called "trust-property" or "trust-money;" the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument (if any) by which the trust is declared is called the "instrument of trust:"

"instrument of trust:"

"breach of trust:"

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust:"

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein, and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

"registered."

"notice."

Expressions defined in Act IX. of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Lawful purpose.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations.

(*a*) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(*c*) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of immoveable property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

Trust of moveable property.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust-property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Creation of trust.

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Illustrations.

(*a*.) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(*b*.) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*.) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*.) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(*e*.) A bequeaths a shop and stock-in-trade to B on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(*a*) by every person competent to contract, and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(*a*.) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(*b*.) A transfers certain property to B in trust to sell it, and to pay, out of the proceeds, A's debts. B accepts the trust, and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c.*) A bequeaths a lakh of rupees to B upon certain trusts, and appoints him his executor. B severs the lakh from the general assets, and appropriates it to the specific purpose. This is an acceptance of the trust. Act II. of 1882.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

Trustee to execute trust.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal, or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*), in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(*a.*) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b.*) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c.*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property, to obtain, where necessary, a transfer of the trust-property to himself, and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(*a.*) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b.*) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

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Illustration.

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not, for himself or another, set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust-property.

Illustrations.

(*a.*) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(*b.*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(*c.*) A, a trustee of two debts for B, releases one, and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d.*) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertize the sale, and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e.*) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(*f.*) A, a trustee for B, of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g.*) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(*h.*) A, a trustee for B, allows the trust to be executed solely by his co-trustee C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(*a.*) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(*b.*) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to be impartial.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C, and D.

Trustee to prevent waste.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

19. A trustee is bound (*a*) to keep clear and accurate accounts of the trust-property, and (*b*), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

20. Where the trust-property consists of money, and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(*a*) in promissory notes, debentures, stock, or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) in bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) in stock or debentures of, or shares in Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(*d*) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India;

(*e*) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one third, or, if consisting of buildings, exceeds by one half, the mortgage-money; or

(*f*) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may, from time to time, prescribe in this behalf:

Provided that, where there is a person competent to contract, and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*), and (*f*), shall be made without his consent in writing.

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21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871,* or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

Mortgage of land pledged to Government under Act XXVI. of 1871.

Deposit in Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Sale by trustee directed to sell within specified time.

Illustration.

A bequeaths property to B, directing him, with all convenient speed and within five years, to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(*a*) where he has actually received interest:

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(*c*) where the trustee ought to have received interest, but has not done so:

(*d*) where he may be fairly presumed to have received interest.

He is liable, in case (*a*), to account for the interest actually received, and, in cases (*b*), (*c*), and (*d*), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(*e*) Where the breach consists in failure to invest trust-money, and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(*f*) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

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* Or, where the Land Improvement Loans Act (XIX. of 1883) is in force, under that Act.—See Act XIX. of 1883, ss. 1 and 2.

Illustrations.

(*a*.) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*.) A bequeaths a house to B in trust to sell it, and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated, and its market-price falls. B is answerable to C for the loss.

(*c*.) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*.) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (*a*), (*b*), (*c*), or (*d*). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made and the intermediate dividends and interest thereon.

(*e*.) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(*f*.) The instrument of trust directs the trustee to invest trust-money in any of such securities, and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*.) Trust-property is invested in one of the securities mentioned in section 20, clause (*a*), (*b*), or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*.) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off allowed to trustee.

24. A trustee, who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property, cannot set off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

Non-liability for predecessor's default.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessors.

Non-liability for co-trustee's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(*b*) where he allows his co-trustee to receive trust-property, and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

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(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

A co-trustee, who joins in signing a receipt for trust property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But, as between the trustees themselves, if one be less guilty than another, and has had to refund the loss, the former may compel the latter, or his legal representative, to the extent of the assets he had received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

Of the Rights and Powers of Trustees.

Right to title-deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

Right to reimbursement of expenses.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be recouped for erroneous over-payment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and, where he is a beneficiary, the trustee has a charge on his interest for such amount.

Right to indemnity from gainer by breach of trust.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper in the opinion of the Court for summary disposal.

Right to apply to Court for opinion in management of trust-property.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duties as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

Right to settlement of accounts.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper

General authority of trustee.

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for the realization, protection, or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.*

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell in lots, and either by public auction or private contract.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any condition of sale or contract for sale, as he thinks fit; and may also buy in the property, or any part thereof, at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Power to sell under special conditions.

Power to buy in and re-sell.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Time allowed for selling trust-property.

Illustrations.

(*a.*) A bequeaths property to B, directing him to sell it with all convenient speed, and pay the proceeds to C. This does not render an immediate sale imperative.

(*b.*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit, and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to convey.

40. A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Power to vary investments.

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole

Power to apply property of minors, &c., for their maintenance, &c.

* In s. 36, the second paragraph, repealed by Act XII. of 1891, Sch. I., has been omitted.

or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen: Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses.

Nothing in this section shall be deemed to affect the provision of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

42. Any trustees or trustee may give a receipt in writing for any money, securities, or other moveable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c.

43. Two or more trustees acting together may if and as they think fit—

(*a*) accept any composition or any security for any debt or for any property claimed;

(*b*) allow any time for payment of any debt;

(*c*) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust; and,

(*d*) for any of those purposes, enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust (if any) a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom one disclaims or dies.

44. When an authority to deal with the trust-property is given to several trustees, and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Act II. of 1882.

Suspension of trustee's powers by decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers, except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

Trustee cannot renounce after acceptance.

46. A trustee who has accepted the trust cannot afterwards renounce it, except (*a*) with the permission of a principal Civil Court of original jurisdiction, or (*b*), if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of special power in the instrument of trust.

Trustee cannot delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

Illustrations.

(*a*.) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(*b*.) A is a trustee of certain property with power to sell the same A may employ an auctioneer to effect the sale.

(*c*.) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services.

50. In the absence of express direction to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

Trustee may not use trust-property for his own profit.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

52. No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof for himself.

Co-trustees may not lend to one of themselves.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

Right to rents and profits.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(*a*.) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24 and then to transfer the gross amount to him. A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(*b*.) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority, and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*.) A transfers certain property to B, and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Act II. of 1882.

Right to inspect and take copies of instrument of trust, accounts, &c.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property, and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that, when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust.

59. Where no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where, for any other reason, the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad; an alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(*a.*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(*b.*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c.*) A convevs certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d.*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e.*) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to any act of duty.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(*a*.) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*.) A is trustee of certain land, with a power to sell the same, and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful purchase by trustee.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it remains in his hands unsold, or if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case, and of his rights as against the trustee.

Following trust-property—into the hands of third persons;

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration that the property is comprised in the trust.

into that into which it has been converted.

Where the trustee has disposed of trust-property, and the money or other property which he has received therefor can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(*a*.) A, a trustee for B, of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*.) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Act II of 1882.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency-notes, and negotiable instruments in the hands of a *bonâ-fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property, and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account, of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(*a*.) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*.) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(*a*) joins in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not, within a reasonable time, take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee, and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him, and all who claim under him (otherwise than as transferees for consideration without notice of the breach), until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. A trustee may be discharged from his office only as follows:—

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, &c.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract, or the surviving

Act II. of 1882.

or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased.

The Official Trustee may, with his consent, and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

74. Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply, by petition to a principal Civil Court of original jurisdiction, for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in, or to be inferred from, the instrument of trust; (*b*) to the wishes of the person (if any) empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust; and (*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely, or jointly, with the surviving or continuing trustees, or trustee, as the case may require.

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

76. On the death or discharge of one of several co-trustees, the trust survives, and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

(*a*) when its purpose is completely fulfilled; or

(*b*) when its purpose becomes unlawful; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent;

(*b*) where the trust has been declared by a non-testamentary instrument, or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same, and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust; but if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it, and it cannot be inferred consistently with the attendant circumstances, that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(*a*.) A conveys land to B without consideration, and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*.) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(*c*.) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*d*.) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

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Transfer to one for consideration paid by another.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317,* or Act No. XI. of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36.

Trust incapable of execution, or executed without exhausting trust-property.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(*a.*) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b.*) A transfers Rs. 10,000 in the four per cents. to B in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(*c.*) A conveys land to B upon trust to sell it, and apply one moiety of the proceed for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d.*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed-of interest in the money or land if purchased.

Transfer for illegal purpose.

84. Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Bequest for illegal purpose.

85. Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

* See Act XIV. of 1882, s. 3.

Transfer pursuant to rescindable contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission, or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor subject to re-payment by the latter of the consideration actually paid.

Debtor becoming creditor's representative.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage gained by fiduciary.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(*a.*) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b.*) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising for such user.

(*c.*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*d.*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*e.*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(*f.*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*g.*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*h.*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Act II. of 1882.

Illustrations.

(*a*.) A, the tenant for life of leasehold property, renews the lease in his own name, and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(*b*.) A village belongs to a Hindú family. A, one of its members, pays nazráná to Government, and thereby procures his name to be entered as the inámdár of the village. A holds the village for the benefit of himself and the other members.

(*c*.) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale, and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage, and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries, and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold, for the benefit of such creditors, the advantage so gained.

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(*a*.) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*.) A by mistake assumes the character of a trustee for B, and, under colour of the trust, receives certain moneys. B may compel him to account for such moneys.

(*c*.) A makes a gift of a lákh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's duties, liabilities, and disabilities.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (*a*), where he rightfully cultivates the property, or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with the person for whose benefit he holds

it, or with any one through whom such person claims, he may, without the permission of the Court, buy, or become lessee or mortgagee of, the property or any part thereof. Act II. of 1882.

Saving of rights of *bonâ-fide* purchasers.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

STATUTE.

Year and chapter.	Short title.	Extent of repea
29 Car. II., c. 3. ...	The Statute of Frauds.	Sections 7, 8, 9, 10, and 11.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866:..	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37. In sections 39* and 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or."
I. of 1877 ...	The Specific Relief Act, 1877.	In section 12 the first illustration.

* In the schedule the figures 39 have been repealed by Act XII. of 1891, Sch. I.; but the two words between which the figures 39 stand are allowed to stand as they are.

Acts III. & IV. of 1882.

ACT III. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 19TH JANUARY 1882.

An Act to amend the law relating to Seditious Publications.

Preamble. WHEREAS it is expedient to amend the law relating to Seditious Publications; It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Seditious Publications Act, 1882."

Local extent. Commencement. It extends to the whole of British India; and shall come into force at once.

2. *Repeal of Acts.* [*Repealed by Act XII. of 1891, Sch. I.*]

Section inserted after section 60, Act No. XIV. of 1866. **3.** After section 60 of Act No. XIV. of 1866 (*The Indian Post Office Act, 1866*), the following section shall be inserted, namely:—

"60A. [*See Vol. I., p. 632.*]

ACT IV. OF 1882.*

TRANSFER OF PROPERTY ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH FEBRUARY 1882.

An Act to amend the law relating to the Transfer of Property by act of Parties.

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Transfer of Property Act, 1882:"

Commencement. It shall come into force on the first day of July 1882:

Extent. It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Punjab, and the Chief Commissioner of British Burma.†

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* This Act has ceased to be in force in the Naga Hills District, the Dibrugarh Frontier Tract, the North Cachar Hills, and the Mikei Hills Tract.—See *Assam Gazette*, 1884, Pt. II., pp. 212 and 705 respectively.

† This reference to British Burma should now be read as applying to Lower Burma.—See Act XX. of 1886, s. 4.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend* this Act to the whole or any specified part of the territories under its administration. Act IV. of 1882.

"And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

"Sections 54, paragraphs 2 and 3, 59, 107, and 123."†

Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107, and 123, shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise.‡

Repeal of Acts.

2. In the territories to which this Act extends for the time being, the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or,

(*d*) save as provided by section 57 and chapter 4 of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction; and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.

Interpretation-clause—

3. In this Act, unless there is something repugnant in the subject or context,—

"immoveable-property:"

"immoveable property" does not include standing timber, growing crops, or grass:

"instrument:"

"instrument" means a non-testamentary instrument:

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* This Act has, from the 1st January 1893, been extended to—

(1) the whole of the territories (other than the Scheduled Districts) under the administration of the Government of Bombay (see *Bombay Government Gazette*, 1892, Pt. I., p. 1071); and

(2) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon (see *Burma Gazette*, 1892, Pt. I., p. 373).

† The two clauses quoted have been substituted for the original clause by Act III. of 1885, s. 1. S. 54, paragraphs 2 and 3, and sections 59, 107, and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of the Cantonments Act, 1889, extend to every cantonment in British India.—See Act XIII. of 1889, s. 32.

‡ This clause has been added by Act III. of 1885, s. 2, and is to be deemed to have been added from the date on which Act IV. of 1882 came into force.

Act IV. of 1882.

"registered" means registered in British India under the law for the time being in force regulating the registration of documents:

"registered:"

"attached to the earth:" "attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, s. 229.

"Notice."

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

And sections 54, paragraphs 2 and 3, 59, 107, and 123, shall be read as supplement to the Indian Registration Act, 1877.*

CHAPTER II.†

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(*A*)—*Transfer of property, whether moveable or immoveable.*

"Transfer of property" defined.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act.

What may be transferred.

6. Property of any kind may be transferred, except as otherwise provided by this Act, or by any other law for the time being in force:

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

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* This paragraph has been added by Act III. of 1885, s. 3.

† Nothing in Ch. II. is to be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.—See s. 2, *supra*.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

(*i*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee.*

Persons competent to transfer.

7. Every person competent to contract, and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the time being in force.

Operation of transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition restraining alienation.

10. Where property is transferred subject to a condition or limitation, absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

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* Cl. *i*, has been added by Act III. of 1885, s. 4.

Act IV. of 1882.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is transferred subject to a condition or limitation, making any interest therein reserved or given to or for the benefit of any person to cease on his becoming insolvent, or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property, of which he is the owner, to B, in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons, with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to take effect on failure of prior transfer.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14, and 15, any interest created in the same transaction, and intended to take effect after or upon failure of such prior interest, also fails.

Transfer in perpetuity for benefit of public.

17. The restrictions in sections 14, 15, and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.

Direction for accumulation.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Vested interest.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith, or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person.

When unborn person acquires vested interest on transfer for his benefit.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or, if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event; in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary, to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person, if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails, unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Act IV. of 1882.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional transfer.

25. An interest created on a transfer of property, and dependent upon a condition, fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(*a*.) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*.) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c*.) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*.) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b*.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. B marries without the consent of C, D, and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(*a.*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(*b.*) A transfers property to his wife; but in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property, an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person, or that, in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25, and 27.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor, or marries without C's consent, the Rs. 500 shall go to D. B marries, when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a.*) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b.*) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Transfer conditional on performance of act, no time being specified for performance.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Act IV. of 1882.

Transfer conditional on performance of act, time being specified.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition; such further time shall, as against him, be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But, if no time is specified for the performance of the act, then, if its performance is, by the fraud of a person interested in the non-fulfilment of the condition, rendered impossible or indefinitely postponed, the condition shall, as against him, be deemed to have been fulfilled.

Election.

Election when necessary.

35. Where a person professes to transfer property which he has no right to transfer, and, as part of the same transaction, confers any benefit on the owner of the property, such owner must elect either to confirm such transfer, or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultánpur is the property of C, and worth Rs. 800. A, by an instrument of gift, professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must, out of the Rs. 1,000, pay Rs. 800 to B.

The rule in the first paragraph of this section applies, whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who, in his one capacity, takes a benefit under the transaction, may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and, as part of the same transaction, gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Apportionment of periodical payments on determination of interest of person entitled.

36. In the absence of a contract or local usage to the contrary, all rents annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of benefit of obligation on severance.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed, and that the severance does not substantially increase the burden of the obligation; but, if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes, unless and until the Local Government, by notification in the official Gazette, so directs.

Illustrations.

(*a*.) A sells to B, C, and D, a house situate in a village, and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money, and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C, and D.

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(b.) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed, as a term of his lease, to perform this work for A. B, C, and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C, and D may join in giving.

B.—Transfer of Immoveable Property.

Transfer by person authorized only under certain circumstances to transfer.

38. Where any person authorized only under circumstances in their nature variable to dispose of immoveable property transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary; and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention, or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindú, transfers Sultánpur to his sister-in-law B in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as he may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

Burden of obligation imposing restriction on use of land,

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another, or of any easement thereon, a right to restrain the enjoyment of the latter property, or to compel its enjoyment in a particular manner, or

or of obligation annexed to ownership, but not amounting to interest or easement.

where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force, he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by ostensible owner.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by person having authority to revoke former transfer.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition; but, on B's dying, A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint transfer for consideration.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were

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In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by person having distinct interests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(*a*.) A, owning a moiety, and B and C, each a quarter share, of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of mauza Lálpura. There being no agreement to the contrary, A is entitled to an eighth share in Lálpura, and B and C each to a sixteenth share in that mauza.

(*b*.) A being entitled to a life-interest in mauza Atrali, and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600; the reversion, Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money; B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer, one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later-created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is, at the date of the transfer, insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bonâ fide* paid to holder under defective title.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has, in good faith, paid or delivered to any person of whom he, in good faith,

held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits. Act IV. of 1882.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Improvements made by *bonâ-fide* holders under defective titles.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops, and to free ingress and egress to gather and carry them.

Transfer of property pending suit relating thereto.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose.

Fraudulent transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat, or delay any such person, and such transfer is made gratuitously, or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

"Sale" defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised.

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Sale how made.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in, or charge on, such property.

Rights and liabilities of buyer and seller.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

(1.) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents ;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same :

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it.

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* Paragraphs 2 and 3 extend to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1). These paragraphs shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested. Act IV of 1882.

(3.) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

Provided that (*a*), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (*b*), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*), the seller, and in case (*b*), the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents, and furnish such true copies thereof or extracts therefrom as he may require ; and, in the meantime, the seller or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4.) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer ;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money or any part thereof remaining unpaid, and for interest on such amount or part.

(5.) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest ;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller, or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer may retain, out of the purchase-money, the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller ;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6.) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming un-

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der him, with notice of the payment to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

Sale of one of two properties subject to a common charge.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Discharge of Incumbrances on Sale.

Provision by Court for incumbrances, and sale freed therefrom.

57. (*a.*) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court, or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,

(1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down, or otherwise provide for, that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court, for special reasons (which it shall record), thinks fit to require a larger additional amount.

(*b.*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for retention and investment of the money in Court.

(*c.*) After notice served on the persons interested in, or entitled to, the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d.*) An appeal shall lie from any declaration, order, or direction under this section as if the same were a decree.

(*e.*) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction; (2) the Court of

a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section. Act IV. of 1882.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

"Mortgage," "mortgagor," and "mortgagee" defined.

58. (*a*.) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money; and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Simple mortgage.

(*b*.) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold, and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(*c*.) Where the mortgagor ostensibly sells the mortgaged property—

on condition that, on default of payment of the mortgage-money on a certain date, the sale shall become absolute, or

on condition that, on such payment being made, the sale shall become void, or

on condition that, on such payment being made, the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale.

Usufructuary mortgage.

(*d*.) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property, and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest, and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage, and the mortgagee an usufructuary mortgagee.

English mortgage.

(*e*.) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

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Mortgage when to be by assurance.

59.* Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor, and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí, and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, to the mortgagor, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him, or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties, or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Right to redeem one of two properties separately mortgaged.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

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* S. 59 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (*r*). S. 59 shall not extend, or be extended, to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money—when the term (if any) prescribed for the payment of the mortgage-money has expired, and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided.

Accession to mortgaged property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled, as against the mortgagee, to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture, or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned, the profits, if any, arising from the accession, shall be credited to the mortgagor.

Where the mortgage is usufructuary, and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession, shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Renewal of mortgaged lease.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

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(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of a usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to, and shall go with, the interest of the mortgagee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

Waste by mortgagor in possession.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate ; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient, or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section, unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

Right to foreclosure or sale.

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or a usufructuary mortgagee, as such, to institute a suit for foreclosure or sale, or a mortgagee by conditional sale, as such, to institute a suit for sale ; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure ; or

(*c*) to authorize the mortgagee of a railway, canal, or other work, in the maintenance of which the public are interested, to institute a suit for foreclosure or sale ; or

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage. Act IV. of 1882.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

(*a*) where the mortgagor binds himself to repay the same:

(*b*) where the mortgagee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the mortgagor:

(*c*) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Power of sale when valid.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property or any part thereof, without the intervention of the Court, is valid in the following cases, "and in no others"* (namely)—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette;"*

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the town of Calcutta, Madras, Bombay, Karáchí, or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage, amounting at least to five hundred rupees, is in arrear, and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances (if any), to which the sale is not made subject,

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*The words quoted have been inserted by Act III. of 1885, s. 5.

Act IV. of 1882.

or after payment into Court, under section 57, of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money (if any) due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections 6 to 19 (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette."*

Accession to mortgaged property.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(*a*.) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*.) A mortgages a certain plot of building land to B, and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Rights of mortgagee in possession.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture, or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and,

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

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* The words quoted have been inserted by Act III. of 1885, s. 5.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed, or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured. Act IV. of 1882.

Nothing in this section shall be deemed to authorize the motgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Charge on proceeds of revenue-sale.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus (if any) of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Right of subsequent mortgagee to pay off prior mortgagee.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender, and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee as such, to whom he has made such tender.

Rights of mesne mortgagee against prior and subsequent mortgagees.

75 Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure, and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

Act IV. of 1882.

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full, and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money, and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus (if any) shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender, or from the earliest time when he could take such amount out of Court, as the case may be.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss (if any) occasioned by such failure.

Receipts in lieu of interest.

77. Nothing in section 76, clauses (*b*), (*d*), (*g*), and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

Postponement of prior mortgagee.

78. Where, through the fraud, misrepresentation, or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Mortgage to secure uncertain amount when maximum is expressed.

79. If a mortgage, made to secure future advances, the performance of an engagement, or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does

not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs 10,000, to priority over C.

Tacking abolished.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

Marshalling securities.

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend, but not so as to prejudice the rights of the first mortgagee, or of any other person having acquired for valuable consideration an interest in either property.

Contribution to mortgage-debt.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

Deposit in Court.

Power to deposit in Court money due on mortgage.

83. At any time after the principal money has become payable, and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law* for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and, on depositing in the same Court the mortgage-deed if then in his

* See the Code of Civil Procedure (Act XIV. of 1882), ss. 51 and 52.

Act IV of 1882.

possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of interest.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section, or in section 83, shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment, or tender of the mortgage-money.

Suits for Foreclosure, Sale, or Redemption.

Parties to suits for foreclosure, sale, and redemption.

85. Subject to the provisions of the Code of Civil Procedure, section 437,* all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

Decree in foreclosure-suit.

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

Procedure in case of payment of amount due.

87. If payment is made of such amount, and of such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put into possession of the mortgaged property.

Order absolute for foreclosure.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

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* This reference to s. 437 of the Civil Procedure Code (Act X.) of 1877 should now be read as applying to s. 437 of the Civil Procedure Code (Act XIV.) of 1882.—See s. 3 of the latter Act.

Provided that the Court may, upon good cause shown, and upon such terms (if any) as it thinks fit, from time to time, postpone the day appointed for such payment. Act IV. of 1882.

Power to enlarge time.

On the passing of an order under the second paragraph of this section, the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, Schedule IV., No. 129,* for the words "Final decree," the words "Decree absolute" shall be substituted.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section 86, and also ordering that, in default of the defendant paying, as therein mentioned, the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court, and applied in payment of what is so found due to the plaintiff, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

Decree for sale.

In a suit for foreclosure, if the plaintiff succeeds, and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale, and to secure the performance of the terms.

Power to decree sale in foreclosure-suit.

89. If, in any case under section 88, the defendant pays to the plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the cost (if any) awarded to him, and such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put in possession of the mortgaged property; but, if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section 88, and thereupon the defendant's right to redeem and the security shall both be extinguished.

Procedure when defendant pays amount due.

Order absolute for sale.

90. When the net proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

Recovery of balance due on mortgage.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property;

(*b*) any person having any interest in, or charge upon, the right to redeem the property;

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* This reference to Sch. IV., No. 129, of the Code of Civil Procedure (Act X.) of 1877, should now be read as applying to Sch. IV., No. 129, of the Code of Civil Procedure (Act XIV.) of 1882.—See s. 3 of the latter Act.

Act IV. of 1882.

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(*g*) a creditor of the mortgagor who has, in a suit for the administration his estate, obtained a decree for sale of the mortgaged property.

Decree in redemption-suit.

92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage, and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; and

that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

In case of redemption, possession.

93. If payment is made of such amount, and of such subsequent costs as are mentioned in section 91, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In default, foreclosure or sale.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court, and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section, the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished:

Power to enlarge time.

Provided that the Court may, upon good cause shown, and upon such terms (if any) as it thinks fit, from time to time, postpone the day fixed under section 92 for payment to the defendant. Act IV. of 1882.

Costs of mortgagee subsequent to decree.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption, or sale up to the time of actual payment.

Charge of one of several co-mortgagors who redeems.

95. Where one of several mortgagors redeems the mortgaged property, and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

Sale of Property subject to prior Mortgage.

Sale of property subject to prior mortgage.

96. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds.

97. Such proceeds shall be brought into Court, and applied as follows:—

first, in payment of all expenses incident to the sale of property incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section, or in section 96, shall be deemed to affect the powers conferred by section 57.

Anomalous Mortgages.

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*), and (*e*).

98. In the case of a mortgage, not being a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Act IV. of 1882.

Attachment of Mortgaged Property.

Attachment of mortgaged property.

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale, otherwise than by instituting a suit under section 67, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.*

Charges.

Charges.

100. Where immoveable property of one person is, by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82, and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Extinguishment of charges.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

Service or tender on or to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person, or otherwise duly authorized to accept such service or tender, shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

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* This reference to s. 43 of the Civil Procedure Code (Act X.) of 1877 should now be read as applying to s. 43 of the Civil Procedure Code (Act XIV.) of 1882.—See s. 3 of the latter Act.

Act IV. of 1882.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted, or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served, or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI. of the Code of Civil Procedure* shall, so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed thereunder.

Notice, &c., to or by person incompetent to contract.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out in itself, and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically, or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered, is called the rent.

Lessor, lessee, premium, and rent defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease, from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice, expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

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* This reference to Ch. XXXI. of the Civil Procedure Code (Act X.) of 1877 should now be read as applying to Ch. XXXI. of the Civil Procedure Code (Act XIV.) of 1882. —See s. 3 of the latter Act.

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Leases how made.

107.* A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

Rights and liabilities of lessor and lessee.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

A.—Rights and Liabilities of the Lessor.

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, or of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(*b*) the lessor is bound on the lessee's request to put him in possession of the property :

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption :

The benefit of such contract shall be annexed to, and go with, the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested :

B.—Rights and Liabilities of the Lessee.

(*d*) If, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(*e*) if, by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

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* S. 107 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (*r*). S. 107 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

(*h*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property in the state in which he received it:

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee, and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(*j*) the lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee:

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of lessor's transferee.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he

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is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee, and the lessee, may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Exclusion of day on which term commences.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year, or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

111. A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(*a*.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Effect of holding over.

Illustrations.

(*a*.) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house, and pays the rent to A. C's lease is renewed from month to month.

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(*b.*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

Exemption of leases for agricultural purposes.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification published in the local official Gazette, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

"Exchange" defined.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Right of party deprived of thing received in exchange.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation, or to the return of the thing transferred by him.

Rights and liabilities of parties.

120. Save as otherwise provided in this chapter, each party has the rights, and is subject to the liabilities of a seller as to that which he gives, and has the rights, and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

"Gift" defined.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the lifetime of the donor, and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

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123.* For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

Gift to several, of whom one does not accept.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

When gift may be suspended or revoked.

126. The donor and donee may agree that, on the happening of any specified event which does not depend on the will of the donor, a gift shall be suspended or revoked; but a gift, which the parties agree shall be revocable wholly or in part at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a.*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b.*) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Onerous gifts.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are, not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.

A donee not competent to contract, and accepting property burdened by any obligation, is not bound by his acceptance. But if, after becoming competent to contract, and being aware of the obligation, he retains the property given, he becomes so bound.

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* S. 123 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (*1*). S. 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

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Illustrations.

(*a.*) A has shares in X, a prosperous joint-stock company, and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b.*) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal donee.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Saving of donations *mortis causâ* and Muhammadan law.

129. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 123, any rule of Hindú or Buddhist law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

Actionable claim.

130. A claim which the Civil Courts recognize as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Transfer of debts.

131. No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor, or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property, shall be valid as against such transfer.

Illustration.

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

Notice to be in writing signed.

132. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Debtor to give effect to transfer.

133. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer, unless where the debtor resides, or the property is situate, in a foreign country, and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

Warranty of solvency of debtor.

134. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

135. Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Discharge of person against whom claim is sold.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir to, or co-proprietor of, the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence, and is ready for judgment.

136. No Judge, pleader, mukhtár, clerk, bailiff, or other officer connected with Courts of justice, can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Incapacity of officers connected with Courts of justice.

137. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of debt.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue (if any) belongs to the transferor.

Mortgaged debt.

139. Nothing in this chapter applies to negotiable instruments.

Saving of negotiable instruments.

THE SCHEDULE.

(*a*.) STATUTES.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII., c. 10 ...	Uses	The whole.
13 Eliz., c. 5 ...	Fraudulent conveyances ...	The whole.
27 Eliz., c. 4 ...	Fraudulent conveyances ...	The whole.
4 Wm. & Mary, c. 16	Clandestine mortgages ...	The whole.

(b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX. of 1842 ...	Lease and release ...	The whole.
XXXI. of 1854 ...	Modes of conveying land ...	Section 17.
XI. of 1855 ...	Mesne-profits and improvements.	Section 1; in the title the words "to mesne-profits and" and in the preamble "to limit the liability for mesne-profits and."
XXVII. of 1866 ...	Indian Trustees Act ...	Section 31.
IV. of 1872 ...	Panjáb Laws Act ...	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875 ...	Central Provinces Laws Act...	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XVIII. of 1876 ...	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877 ...	Specific Relief ...	In sections 35 and 36, the words "in writing."

(c) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of debts: interest: Mortgagees in possession.	Section 15.

ACT V. OF 1882.*

THE INDIAN EASEMENTS ACT.

RECEIVED THE G. G.'S ASSENT ON THE 17TH FEBRUARY 1882.

An Act to define and amend the law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Easements Act, 1882:"

Local extent. It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg;

Commencement. and it shall come into force on the first day of *July 1882*.

Savings. **2.** *Nothing* herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

(*a*) any right of the Government to regulate the collection, retention, and distribution of the water of rivers and streams flowing in natural channels and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immoveable property which the Government, the public, or any person may possess irrespective of other immoveable property; or

(*c*) any right acquired, or arising out of a relation created, before this Act comes into force.

Repeal of Act XV. of 1877, sections 26 and 27. **3.** Sections 26 and 27 of the Indian Limitation Act, 1877, and the definition of "easement," contained in that Act, are repealed in the territories to which this act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX. of 1871, shall, in such territories, be read as made to sections 15 and 16 of this Act.

CHAPTER I.

OF EASEMENTS GENERALLY.

"Easement" defined. **4.** An easement is a right which the owner or occupier of certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done in, or upon, or in respect of, certain other land not his own.

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* By Act VIII. of 1891, the Indian Easements Act has been extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

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Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

Illustrations.

(*a.*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b.*) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c.*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d.*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers, and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e.*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f.*) A is bound to cleanse a watercourse running through his land, and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a.*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b.*) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(*c.*) Rights annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(*d.*) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of year or other limited period, or subject to periodical interruption, or exercisable only at a certain place; or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely):—

Exclusive right to enjoy.

(*a.*) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to advantages arising from situation.

(*b.*) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(*a.*) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(*b.*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c.*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d.*) The right of very owner of land to so much light and air as pass vertically thereto.

(*e.*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f.*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g.*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel, and all water on its surface which does not pass in a defined channel.

(*h.*) The right of every owner of land that the water of every natural stream which passes by, through, or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force, or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i.*) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j.*) The right of every owner of land abutting on a natural stream, lake, or pond to use and consume its water for drinking, household purposes, and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only, and in a natural and known course.

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CHAPTER II.

THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and, to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(*a.*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists, or for any shorter period.

(*b.*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c.*) A, B, and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land, or on any part thereof.

(*d.*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(*a.*) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset; provided that A's supply is not thereby diminished.

(*b.*) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and mortgagor.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of the section, unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Lessee.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Who may acquire easements.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

One of two or more co-owners of immoveable property may as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and *quasi*-easements.

13. Where one person transfers or bequeaths immoveable property to another,—

(*a*) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(*b*) if such an easement is apparent and continuous, and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(*d*) if such an easement is apparent and continuous, and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint-property of several persons,—

(*e*) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or

(*f*) if such an easement is apparent and continuous, and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*), and (*e*), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a.*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land, or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b.*) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only, and is inaccessible

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except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(*c.*) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d.*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(*e.*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B, and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f.*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necesary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(*g.*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h.*) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i.*) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j.*) A, the owner of two adjoining buildings, sells one to B, and the other to C, C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(*k*) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l.*) Under the Land Acquisition Act, 1870, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m.*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n.*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction of way of necessity.

14.* When *a* right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

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* In s. 14 the italicised article *a* has been inserted by Act XII. of 1891.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out. Act V. of 1882.

Acquisition by prescription.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement, shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

Illustrations.

(*a.*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto, as an easement and as of right, without interruption, from 1st January 1862 to 1st January 1882. The plaintiff is entitled to judgment.

(*b.*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that, for a year of that time, the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

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(*c.*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion, during the twenty years, had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over, or from which any easement has been enjoyed or derived, has been held under, or by virtue of, any interest for life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life-interest in the land; that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired :—

(*a*) a right which would tend to the total destruction of the subject of the right or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a.*) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b.*) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves by act of parties, or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed

to pass the easement to the person in whose favour the transfer or devolution takes place. Act V. of 1882.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree (if any) by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a.*) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b.*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors, and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

Exercise of easement.

Confinement of exercise of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can, without detriment to the dominant owner, be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Illustrations.

(*a.*) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(*b.*) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

Right to alter mode of enjoyment.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

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Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a.*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw mill into a corn-mill, provided that it can be worked by the same amount of water.

(*b.*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(*c.*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature of the pollution.

(*d.*) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing saw-dust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Right to do acts to secure enjoyment.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a.*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b.*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c.*) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land, and repair the way, or remove the tree from it.

(*d.*) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way, and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e.*) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(*f.*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land, and repair the wall.

(*g.*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land, and repair the dam.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for expenses necessary for preservation of easement.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement, or to render its exercise less convenient.

Illustrations.

(*a*.) A, as owner of a house, has a right to lead water, and send sewage through B's land. B is not bound, as servient owner, to clear the watercourse, or scour the sewer.

(*b*.) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*.) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound, as servient owner, to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*.) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*.) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent of easements.

28 With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(*a*) a right of way of any one kind does not include a right of way of any other kind:

Right to light or air acquired by grant.

(*b*) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died, or the non-testamentary instrument was made:

Prescriptive right to light or air.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door, or other opening, is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used:

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(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Prescriptive right to pollute air and water.

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Other prescriptive rights.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Increase of easement.

Where an easement has been granted or bequeathed, so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased; and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished:

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a.*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b.*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks, by which a certain quantity of foul matter is discharged into it. A extends his works, and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c.*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field, and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree, or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Partition of dominant heritage.

Illustrations.

(*a.*) A house, to which a right of way by a particular path is annexed, is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(*b.*) A house, to which is annexed the right of drawing water from a well to the extent of fifty buckets a day, is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(*c.*) A, having, in respect of his house, an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement, the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Obstruction in case of excessive user.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows, B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

Right to enjoyment without disturbance.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

Suit for disturbance of easement.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement, or of any right accessory thereto, provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the First Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(*a.*) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b.*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

When cause of action arises or removal of support.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

Act V. of 1882.

Injunction to restrain disturbance.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(*a*) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this chapter:

(*b*) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

Illustrations.

(*a*.) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished.

(*b*.) A, in 1860, let Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(*c*.) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear, and his interest is sold. B's easement is extinguished.

(*d*.) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation 1.—An easement is impliedly released—

(*a*) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(*b*) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section. Act V of 1882.

Illustrations.

(*a.*) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(*b.*) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(*c.*) A, having the right to discharge his eaves-droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(*d*) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(*e.*) A, having a projecting roof by means of which he enjoys an easement to discharge eaves-droppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharge it on C's land. The easement is impliedly released.

Extinction by revocation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time, and under any circumstances, beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased, and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(*a*) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Act V. of 1882.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage, and the provisions of section 14 apply to such way.

Illustrations.

(*a.*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land. B's easement is extinguished.

(*b.*) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Extinction by unity of ownership.

Illustrations.

(*a.*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field, to C. Then C forecloses both mortgages, and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(*b.*) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section 41.

(*c.*) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(*d.*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(*e.*) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(*f.*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g.*) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

Extinction by non-enjoyment.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner, and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration. Act V. of 1882.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Act V. of 1882.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

Revival of easements.

51. An easement extinguished under section 45 revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building, and, before twenty years have expired, such building is rebuilt upon the same site; and (*c*), when the destroyed heritage is a dominant building, and before twenty years have expired, such building is rebuilt upon the same site, and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But, when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

"License" defined.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Who may grant license.

53. A license may be granted by any one in the circumstances, and to the extent, in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land, and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee, or exercised by his servants or agents. Act V of 1882.

Illustrations.

(*a*.) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(*b*.) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not, as such, bound by the license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property, and such transfer is in force:

(*b*) the licensee, acting upon the license, has executed a work of a permanent character, and incurred expenses in the execution.

Revocation express or implied.

61. The revocation of a license may be express or implied.

Illustrations.

(*a*.) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*.) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when deemed revoked.

62. A license is deemed to be revoked—

(*a*) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative:

(*c*) where it has been granted for a limited period, or acquired, on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled:

(*d*) where the property affected by the license is destroyed, or by superior force so permanently altered that the licensee can no longer exercise his right:

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

Act VI. of 1882.

(*f*) where the license is granted for a specified purpose, and the purpose is attained or abandoned, or becomes impracticable:

(*g*) where the license is granted to the licensee as holding a particular office, employment, or character, and such office, employment, or character ceases to exist:

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(*i*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

Licensee's rights on revocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property.

Licensee's rights on eviction.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

ACT VI. OF 1882.*

INDIAN COMPANIES ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1882.

*An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.**

Preamble.

WHEREAS it is expedient to amend the law relating to the incorporation, regulation, and winding-up of Trading Companies and other Associations; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Companies Act, 1882:"

Local extent.

It extends to the whole of British India:

Commencement.

It shall come into force on the 1st day of May 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act.

Repeal of Act X. of 1866.

2. On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect—

(*a*) the incorporation of any Company registered under the said Act or any Act thereby repealed;

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* This Act is, to a great extent, a re-enactment of Act X. of 1866, which was transcribed chiefly from 25 and 26 Vic., c. 89.

(*b*) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed; Act VI. of 1882.

(*c*) Table B in the schedule annexed to Act No. XIX. of 1857,* or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

And all references to the said Indian Companies Act, 1866, in Acts or Regulations passed before the commencement of this Act, shall be read as if made to this Act; and all rules made, fees directed, resolutions passed, and other things duly done under the same Act shall be deemed to be respectively made, directed, passed, and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Insurance Company;"

"Insurance Company" means a Company that carries on the business of insurance, either solely, or in common with any other business or businesses;

"Court;"

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;

"District Court."

"District Court" means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

Prohibition of partnerships exceeding certain number.

4. No Company, Association, or Partnership, consisting of more than ten persons, shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or by Royal Charter or Letters Patent; and no Company, Association, or Partnership, consisting of more than twenty persons, shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association, or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act, or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts relating to the following subject-matters:—

The first Part—to the constitution and incorporation of Companies and Associations under this Act;

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act;

The third Part—to the management and administration of Companies and Associations under this Act;

The fourth Part—to the winding-up of Companies and Associations under this Act;

The fifth Part—to the registration-office;

* Repealed by Act X. of 1866, s. 219, and Sch. III.

Act VI. of 1882.

The sixth Part—to the application of this Act to Companies registered under Act No. XIX. of 1857* *(for the incorporation and regulation of Joint Stock Companies and other Associations, either with or without limited liability of the members thereof)*, and Act No. VII. of 1860† *(to enable Joint Stock Banking Companies to be formed on the principle of limited liability)*, or either of them;

The seventh Part—to Companies authorized to register under this Act;

The eighth Part—to the application of this Act to unregistered Companies;

The ninth Part—to miscellaneous provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of forming Company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

Explanation.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Mode of limiting liability of members.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Directors with unlimited liability.

Where a Company is formed as a limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

Memorandum of association of a Company limited by shares.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say):—

(*a*) the name of the proposed Company with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that the liability of the members is limited;

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* Repealed by Act X. of 1866, s. 219, and Sch. III. Table B, however, remains in force.—See s. 2, cl. *c*, *supra*.

† Repealed by Act X. of 1866, s. 219, and Sch. III.

(*e*) the amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount: Act VI. of 1882.

Subject to the following regulations:—

(*f*) that no subscriber shall take less than one share;

(*g*) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a Company limited by guarantee.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say):—

(*a*) the name of the proposed Company, with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited Company.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say):—

(*a*) the name of the proposed Company;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established.

Signature and effect of memorandum of association.

11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing share, or to convert its paid-up shares into stock; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

Act VI. of 1882.

Reduction of Capital and Shares.

Power to Company to reduce capital.

13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-stock Companies, as is hereinafter mentioned.

Explanation I.—The word "capital" includes paid-up capital.

Explanation II.—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Company to add "and reduced" to its name for a limited period.

14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to apply to the Court for an order confirming reduction.

15. A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms, and subject to such conditions, as it deems fit.

When the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced," as mentioned in section 14.

In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

Creditors may object to reduction, and list of objecting creditors to be settled by Court.

16. Where a Company proposes to reduce its capital, every creditor of the Company, who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and, for that purpose, shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction :

Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

Court may dispense with consent of creditor on security being given for his debt.

17. Where a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say) :—

(*a*) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(*b*) If the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into, and adjudicate upon, the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court ; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

18. The Registrar of Joint-stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute ; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the Company is such as is stated in the minute.

Minute to form part of memorandum of association.

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association ; and, subject, as in this Act mentioned, no member of the Company, whether past or present, shall be liable in

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respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person, who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration;

and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and enforce calls and orders on the contributories settled on such list in the same manner, in all respects, as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Registered minute to be embodied in memorandum of association.

21. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty, not exceeding ten rupees, for each copy in respect of which such default is made; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

Penalty on concealment of name of creditor.

22. If any director, manager, or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code, any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Power to reduce capital by cancellation of unissued shares.

23. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

Sub-division of Shares.

Shares may be divided into shares of smaller amount.

24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-divi-

sion of its existing shares or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association: Act VI, of 1882.

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty, not exceeding twenty rupees, for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges, and be subject to the obligations, by this Act imposed on limited Companies, with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered.

The license by the Local Government may be granted upon such conditions, and subject to such regulations, as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may, at the option of the Local Government, be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

Company may have some shares fully paid, and others not.

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things, namely:—

(*a*) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls;

(*b*) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held

by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made;

(*c*) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint-stock Companies at or before the issue of such shares.

Transfer of Shares.

Transfer may be registered at request of transferor.

29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner, and subject to the same conditions, as if the application for such entry were made by the transferee.

Share-warrants to Bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share-warrant), stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Coupons.

Effect of share-warrant.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein, and such shares or stock may be transferred by the delivery of the share-warrant.

Re-registration of bearer of a share-warrant in the register.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering, in its register of members, the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of a share-warrant a member.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent, or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified, in respect of the shares or stock specified in such warrant, for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in register where share-warrant issued.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as hold-

ing such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:— Act VI. of 1882.

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(*c*) the date of the issue of the warrant.

Stamps on share-warrants.

35. There shall be charged on every share-warrant a stamp-duty of an amount equal to three times the amount of the *ad-valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such shares or stock.

Penalty for issuing share-warrant not duly stamped.

If a share-warrant is issued without being duly stamped, the Company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the Company, shall forfeit the sum of five hundred rupees.

Change of Name.

Power of Companies to change name.

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted, or to be instituted, by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Explanation.—The issue of the certificate of incorporation is necessary to complete the change of name.

Articles of Association.

Regulations to be prescribed by articles of association.

37. The memorandum of association may in the case of a Company limited by shares, and shall in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by a guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and, in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by a guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall

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write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Signature and effect of articles of association.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and as if such articles contained a contract on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

General Provisions.

Registration of memorandum of association and articles of association with fees as in table B.

40. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint-stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may, from time to time, direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may, from time to time, direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

Effect of registration.

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act, or by the desire of the parties, to be registered, the Registrar shall certify under his hand that the Company is incorporated, and, in the case of a limited Company, that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may, from time to time, become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with. Act VI. of 1882.

Copies of memorandum and articles to be given to members.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall, for each such offence, incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies.

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company, by its new name that might have been continued or commenced against the Company by its former name.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of interest in Company.

44. The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Definition of "member."

45. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

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Transfer by personal representative.

46. Any transfer of the share or other interest of a deceased member of a Company under this Act made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

47. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—

(*a*) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of any person was entered in the register as a member;

(*c*) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section thirty-four shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Annual list of members.

48. Every Company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(*a*) the amount of the capital of the Company and the number of shares into which it is divided;

(*b*) the number of shares taken from the commencement of the Company up to the date of the summary;

(*c*) the amount of calls made on each share;

(*d*) the total amount of calls received;

(*e*) the total amount of calls unpaid;

(*f*) the total amount of shares forfeited;

(*g*) the names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as

is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar of Joint-stock Companies. Act VI. of 1882.

Particulars to be contained in annual summary.

49. After the issue by the Company of a share-warrant, the annual summary required by section 48 shall contain the following particulars (namely): the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Penalty on Company, &c., not keeping a proper register.

50. If any Company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division, or conversion, give notice to the Registrar of Joint-stock Companies of the same, specifying the shares so consolidated, divided, or converted.

Effect of conversion of shares into stock.

52. Where any Company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of trusts on register.

53. No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Certificate of shares or stock.

54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *primâ-facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business-hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection.

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Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

In addition to the above penalty, any Judge of a High Court may, by order, compel an immediate inspection of the register.

Power to close register.

56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate, and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been

default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie.

Notice to Registrar of rectification of register.

59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

60. The register or members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Liability of Members.

Liability of present and past members of Company.

61. In the event of a Company formed under this Act being wound up every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

(*a*) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(*b*) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:

(*c*) No past member shall be liable to contribute to the assets of the Company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*d*) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(*e*) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(*f*) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:

(*g*) No sum due to any member of a Company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Explanation I.—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

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Explanation II.—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Liability of director whose liability is unlimited.

62. With respect to the contributions to be required in the event of the winding up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section :—

(*a*) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company.

(*b*) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(*c*) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.

(*d*) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges, and expenses of the winding-up.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered office of Company.

63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Notice of situation of registered office.

64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication of name by a limited Company.

65. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name

mentioned in legible characters in such language or languages in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, hundis, promissory-notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company. Act VI. of 1882.

Penalties on non-publication of name.

66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, manager, or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, hundi, promissory-note, endorsement, cheque, or* order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory-note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

Contracts.

Contracts how made.

67. Contracts on behalf of any Company under this Act may be made as follows (that is to say):—

(*a.*) Any contract, which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged:

(*b.*) Any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company; and such contract may, in the same manner, be varied or discharged:

(*c.*) Any contract, which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writting, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

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* The word "or" has been inserted by the Repealing and Amending Act (XII. of 1891).

Act VI. of 1882.

Register of mortgages.

68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry, shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register.

Explanation.—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

Certain Companies to publish statement entered in schedule.

69. Every limited banking Company, and every insurance Company, and deposit, provident, or benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch-office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

List of directors to be sent to Registrar.

70. Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-stock Companies a copy of such register, and shall, from time to time, notify to the Registrar any change that takes place in such directors or managers.

Penalty on Company not keeping register of directors.

71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying

to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty. Act VI. of 1882.

Promissory notes, bills of exchange, and hundis.

72. A promissory note, bill of exchange, or hundí, shall be deemed to have been made, drawn, accepted, or endorsed on behalf of any Company under this Act, if made, drawn, accepted, or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted, or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Prohibition against carrying on business with less than seven members.

73. If any Company under this Act carries on business, when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person, who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Provisions for Protection of Members.

General meeting of Company.

74. A general meeting of every Company under this Act shall be held once at the least in every year.

Balance-sheet.

A balance-sheet shall be made out and filed with the Registrar of Joint-stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to Table A in the First Schedule hereto, or as near thereto as circumstances admit.

Audit.

And once at the least in every year the accounts of the Company shall be examined, and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

No balance-sheet shall be filed with the Registrar, unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before, and adopted by, the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

Meetings.

Company to hold meeting within six months after registration.

75. Every Company formed under this Act, after the commencement of this Act, shall hold a general meeting within six months after its memorandum of association is registered; and, if such meeting is not held, the Company shall be liable to a penalty, not exceeding fifty rupees a day, for every day

Act VI. of 1882.

after the expiration of such six months, until the meeting is held; and every director or manager of the Company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

Power to alter regulations by special resolution.

76. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the First Schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company.

Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Power to make liability of directors unlimited.

Any limited Company formed under this Act or the Indian Companies Act, 1866, may, by a special resolution, if authorized to do so by its regulations as originally framed, or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

Definition of "special resolution."

77. A resolution passed by a Company, under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company, for the time being entitled, according to the regulations of the Company, to vote, as may be present, in person or by proxy (in cases where, by the regulations of the Company, proxies are allowed), at any general meeting, of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members, for the time being entitled, according to the regulations of the Company, to vote, as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given, and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision where no regulations as to meetings.

78. In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned, of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the First Schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registration of special resolutions.

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-stock Companies, and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty, not exceeding twenty rupees, for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Copies of special resolutions to be embodied in articles of association.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print, to any member requesting the same, on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section, or section 76, it shall incur a penalty, not exceeding twenty rupees, for each copy in respect of which such default is made; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

Execution of deeds abroad.

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally, or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

Examination of affairs of Company by inspectors.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

(*a.*) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued;

Act VI. of 1882.

(*b.*) In the case of any Company not having a capital divided into shares upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application for inspection to be supported by evidence.

83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Result of examination how dealt with.

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or to any one or more of them.

All expenses of, and incidental to, any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

Power of Company to appoint inspectors.

86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company.

The inspectors so appointed shall have the same powers, and perform the same duties, as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner, and to such persons, as the Company, in general meeting, directs.

The officers and agents of the Company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of inspectors to be evidence.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible

in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Act VI. of 1882.

Prospectus, &c., to specify dates and names of parties to certain prior contracts.

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-stock Company, shall specify the dates of,* and the names of the parties to, any agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

Notices.

Service of notices on Company.

89. Any summons, notice, order, or other document required to be served upon the Company, may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of Joint-stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Rules as to notices by letter.

90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post-office.

Authentication of notices by Company.

91. Any summons, notice, order, or proceeding requiring authentication by the Company, may be signed by any director, secretary, or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Evidence of proceedings at meetings.

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company, in cases where there are directors or managers, to be duly entered in books to be, from time to time, provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company, or meeting of directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened,

* The word "of" has been inserted by the Repealing and Amending Act (XII. of 1891).

Act VI. of 1882. and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators, shall be deemed to be valid; and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Explanation.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Provision as to costs in suits brought by certain limited Companies.

93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaints in suits against members.

94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other moneys due, whereby a suit has accrued to the Company.

Alteration of Forms.

Forms to be used.

95. The forms set forth in the Second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor-General in Council may alter forms.

The Governor-General in Council may, from time to time, make such alterations in the tables and forms contained in the First Schedule hereto; so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the Second Schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Any such table or form, when altered, shall be published in the *Gazette of India*, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor-General in Council in the table marked A contained in the First Schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

Arbitrations.

Power for Companies to refer matters to arbitration.

96. Any Company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms, or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Power to alter or revoke agreements for reference.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke, any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions, or stipulations thereof.

Agreements to be carried into effect.

98. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to arbitrator.

99. Where the Companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

Appointment of arbitrators by Companies.

101. Where there are to be two or more arbitrators, every Company shall, by writing under their common seal, appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appointment of arbitrators by Local Government.

102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

Appointment of arbitrators by Companies to supply vacancies.

103. Where the reference is made to two or more arbitrators, if, before the matters referred to them are determined, any arbitrator dies, or becomes incapable or unfit, or, for seven consecutive days, fails to act as arbitrator, the Company by which he was appointed shall, by writing under their common seal, appoint an arbitrator in his place.

Appointment of arbitrators by Local Government to supply vacancies.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

Appointment of arbitrator not revocable.

105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Appointment of umpire by arbitrators.

106. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint, by writing under their hands, an impartial and qualified person to be their umpire.

Act VI. of 1882.

107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the arbitrators.

Appointment of umpire by Local Government.

108. Where two or more arbitrators are appointed, if, before the matters referred to them are determined, their umpire dies or becomes incapable or unfit, or, for seven consecutive days, fails to act as umpire, the arbitrators shall, by writing under their hands, appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by arbitrators to supply vacancy.

109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

Appointment of umpire by Local Government to supply vacancy.

The umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the arbitrators so failing.

110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding arbitrators and umpires to have powers of predecessors.

111. Where there are two or more arbitrators, if they do not, within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Reference to umpire.

112. The arbitrator and the arbitrators, and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator or the arbitrators, or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Power for arbitrators, &c., to call for books, &c., and examine witnesses on oath.

113. Except where, and as the Companies otherwise agree, the arbitrator and the arbitrators, and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Procedure in the arbitration.

114. The arbitrator and the arbitrators, and the umpire, respectively, may proceed, in the absence of all or any of the Companies, in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator or the arbitrators, or the umpire, shall think fit so to proceed.

Arbitration may proceed in absence of Companies.

115. The arbitrator and the arbitrators, and the umpire, respectively, may, if he and they, respectively, think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Several awards may be made.

Act VI. of 1882.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that, notwithstanding the other matters or any of them, be not then or thereafter awarded on.

Awards made in due time to bind all parties.

116. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators, or the umpire, shall be binding and conclusive on all the Companies:

Power for umpire to extend period for making his award.

117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time, by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not to be set aside for informality.

118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards to be obeyed.

119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things, by every award in accordance with this Act, lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

Agreements, arbitrations, and awards to have effect.

120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct and, where requisite, frame for the purpose.

Costs of arbitration and award.

121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator and the arbitrators, and the umpire, respectively.

Payment of costs.

122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Submission to arbitration to be filed in Court.

123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order, and to all proceedings thereunder.

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PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of "contributory."

124. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory.

125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras, and Bombay.

Contributories in case of death.

126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable, in due course of administration, to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to prove against the estate of such insolvent, or otherwise to allow to be paid, out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

Winding-up by Court.

Circumstances under which Company may be wound up by Court.

128. A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say):—

(*a*) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court;

(*b*) whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;

(*c*) whenever the members are reduced in number to less than seven;

(*d*) whenever the Company is unable to pay its debts;

(*e*) whenever, for any other reason of a like nature, the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed unable to pay its debts.

129. A Company under this Act shall be deemed to be unable to pay its debts— Act VI. of 1882.

(*a*) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

(*b*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;

(*c*) whenever it is proved, to the satisfaction of the Court, that the Company is unable to pay its debts.

Definition of "the Court."

130. The expression "the Court," as used in this Part of this Act, shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless, in the Regulations for the management of the Company, it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras, or Bombay (as the case may be), or by the Chief Court of the Panjáb, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

Definition of "debts."

The expression "debts," as used in this part of this Act, means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a Life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

Application for winding-up to be made by petition.

131. Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

The petition must allege facts which, if proved, will justify an order for winding up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

In the case of a Life-assurance Company, the Court shall not give a hearing to the petition until security, for costs for such amount as the Judge thinks reasonable, is given, and until a *primâ-facie* case is also established to the satisfaction of the Judge; and, where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and if, at the end of the original or any suspended time for which the proceedings have been suspended, such an amount has not been realized by

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means of calls as, with the already-invested assets, is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

Explanation.—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other moneys due.

Contributory when not qualified to present winding-up petition.

132. No contributory of a Company under this Act shall be capable of presenting a petition for winding up such Company, unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that, where a share has, during the whole or any part of the six months, been held by, or registered in the name of, the wife of, a contributory, either before or after her marriage, or by, or in the name of, any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by, and registered in the name of, the contributory.

Commencement of winding-up by Court.

133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction.

134. The Court may, at any time after the presentation of a petition for winding up a Company under this Act, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be pursued by Court on hearing petition.

135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be stayed after order for winding-up.

136. When an order has been made for winding up a Company under this Act, no suit or other proceeding shall be proceeded with, or commenced against, the Company except with the leave of the Court, and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar.

137. When an order has been made for winding up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-stock Companies, who shall make a minute thereof in his books relating to the Company.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

138. Such Court may, at any time after an order has been made for winding up a Company, upon the application of any creditor or contributory of the Company, and upon, proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether, or for a limited time, on such terms, and subject to such conditions, as it deems fit.

Power of Court to stay proceedings.

139. When an order has been made for winding up a Company limited by guarantee, and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Effect of order on share-capital of Company limited by guarantee.

140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Court may have regard to wishes of creditors or contributories.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Official Liquidators.

141. For the purpose of conducting the proceedings in winding up a Company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators.

Appointment of official liquidator.

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration by way of percentage or other-

Resignations, removals, filling up vacancies, and compensation.

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wise as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and duties of official liquidator.

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects, and actionable claims to which the Company is, or appears to be, entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

Power of official liquidator.

144. The official liquidator shall have power, with the sanction of the Court, to do the following things:—

(*a*) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;

(*b*) to carry on the business of the Company, so far as may be necessary for the beneficial winding-up of the same;

(*c*) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels:

(*d*) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the Company's seal;

(*e*) to prove, rank, claim, and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors;

(*f*) to draw, accept, make, and endorse any bill of exchange, hundí, or promissory note in the name and on behalf of the Company; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill, hundí, or note as aforesaid on behalf of the Company, shall have the same effect with respect to the liability of such Company as if such bill, hundí,* or note had been drawn, accepted, made, or endorsed by or on behalf of such Company, in the course of carrying on the business thereof;

(*g*) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory, or from his estate, and which act cannot be conveniently done in the name of the Company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters, or recover such moneys, be deemed to be due to the official liquidator himself: provided that nothing herein contained shall be deemed to affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively;

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*The word "hundí" has been inserted by the Repealing and Amending Act (XII. of 1891).

(*h*) to do and execute all such other things as may be necessary for winding up the affairs of the Company, and distributing its assets. Act VI. of 1882.

145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Discretion of official liquidator.

146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties; provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Appointment of attorney or vakil to official liquidator.

Ordinary Powers of Court.

147. As soon as may be after making an order for winding up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Collection and application of assets.

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or being liable to the debts of, others.

Provision as to representative contributories.

149. The Court may, at any time after making an order for winding up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the Company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled.

Power of Court to require delivery of property.

150. The Court may, at any time after making an order for winding up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents, to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act.

Power of Court to order payment of debts by contributory.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents, from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits:

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

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In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make, to any director or manager of such Company whose liability is unlimited, the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

Power of Court to make calls.

151. The Court may, at any time after making an order for winding up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may, partly or wholly, fail to pay their respective portions of the same.

Power of Court to order payment into Bank.

152. The Court may order any contributory, purchaser, or other person from whom money is due to the Company, to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

153. All moneys, bills, hundís, notes, and other securities paid and delivered into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Provision in case of representative contributory not paying moneys ordered.

154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the moneys due.

Order conclusive evidence.

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories.

157. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order costs.

158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges, and expenses incurred in winding up any Company in such order of priority as the Court thinks just.

Dissolution of Company.

159. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Registrar to make minute of dissolution of Company.

160. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Penalty for not reporting dissolution of Company.

161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

Extraordinary powers of Court.

Power of Court to summon persons before it suspected of having property of Company.

162. The Court may, after it has made an order for winding up the Company, summon before it any officer of the Company or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination of parties by Court.

163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

164. The Court may, at any time before or after it has made an order for winding up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securi-

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ties for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Enforcement of, and Appeal from, Orders.

Power to enforce orders.

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order made in any Court to be enforced by other Courts.

167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with orders to be enforced by other Courts.

168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Appeals from orders.

169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, unless such time is extended by the Court of appeal.

Judicial notice to be taken of signature of officers.

170. In all proceedings under this Part of this Act, every Court, Judge, and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court when such seal is appended to any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special Commissioners for receiving evidence.

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose

of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the Company. Act VI. of 1882.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Affidavits, &c., may be sworn in British India, Great Britain, or Ireland, or abroad, before any competent Court or person.

172. If any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain, or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul, attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Part of this Act.

Voluntary Winding-up of Company.

Circumstances under which Company may be wound up voluntarily.

173. A Company under this Act may be wound up voluntarily—

(*a*) whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;

(*b*) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily;

(*c*) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same:

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding-up.

174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up. When the winding-up is in pursuance

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of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution.

Effect of voluntary winding-up on status of Company.

175. Whenever a Company is wound up voluntarily, the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

Notice of resolution to wind-up voluntarily.

176. Notice of any special resolution or extraordinary resolution passed for winding up a Company voluntarily, shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company:—

(*a*) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company:

(*b*) liquidators shall be appointed for the purpose of winding up the affairs of the Company, and distributing the assets:

(*c*) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them:

(*d*) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(*e*) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers:

(*f*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:

(*g*) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators:

(*h*) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories:

(*i*) the liquidators may, at any time after the passing of the resolution for winding up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that

some of the contributories upon whom the same is made may, partly or wholly, fail to pay their respective portions of the same:

(*j*) the liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up on share-capital of Company limited by guarantee.

178. Where a Company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators.

179. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors.

180. Any arrangement, which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors, shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

181. Any creditor or contributory of a Company that has, in manner aforesaid, entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

Act VI. of 1882.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill up vacancy in office of liquidators.

184. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation, or otherwise, the Company, in general meeting, may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators.

185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding-up to make up an account.

186. As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the Company disposed of; and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

The meeting shall be called by advertisement, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 176.

Liquidators to report meeting to Registrar.

187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Costs of voluntary liquidation.

188. All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

Winding-up subject to the Supervision of the Court.

191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Power of Court, on application, to direct winding-up subject to supervision.

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up the Company by the Court.

Petition for winding-up subject to supervision.

193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up, subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Court may have regard to wishes of creditors.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

194. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order, or in any subsequent order, appoint any additional liquidator.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

195. Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily:

Effect of order of Court for winding-up subject to supervision.

Act VI. of 1882.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

Supplemental Provisions.

Dispositions after commencement of winding-up avoided.

197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

Books of Company to be evidence.

198. Where any Company is being wound up, all books, accounts, and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ-facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts, and documents of Company.

199. Where any Company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the Company and of the liquidator, may be disposed of in the following way; that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company has been wound up voluntarily, in such way as the Company, by an extraordinary resolution, directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

200. Where an order has been made for winding up a Company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

200A.* (*1*) In the distribution of the assets of any company being wound up under this Act, there shall be paid in priority to all other debts— Act VI. of 1882.

Priority of debts.

(*a*) all revenue, taxes, cesses, and rates, whether payable to Her Majesty or to a local authority, due from the Company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary of any clerk or servant in respect of services rendered to the Company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the commencement of the winding-up.

(*2*) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

(*3*) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the Company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator.

201. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

General scheme of liquidation may be sanctioned.

202. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Power to compromise.

203. Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company,

Where compromise proposed, Court may order a meeting of creditors, &c., to decide as to such compromise.

* S. 200A has been inserted by Act VI. of 1887, s. 1.

Act VI. of 1882.

or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors, present either in person or by proxy at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors as the case may be, and also on the liquidator and contributories of the said Company.

Power for liquidators to accept shares, &c., as a consideration for sale of property of Company.

204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies, or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say): either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding up the Company or for appointing liquidators; but, if an order be made within a year for winding up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

206. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator to whom such dispute shall be referred.

Appointment of arbitrator when questions are to be determined by arbitration.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If, for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Vacancy of arbitrator to be supplied.

208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

Appointment of umpire.

If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

209. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Power of arbitrators to call for books, &c.

210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Costs to be in discretion of arbitrators.

211. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Submission to arbitration may be filed in Court.

212. Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress, or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void.

Certain attachments, distresses, and executions to be void.

Act VI. of 1882.

Nothing in this section applies to proceedings by the Government.

Fraudulent preference.

213. Every conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, which would, if made or done by or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

Power of Court to assess damages against delinquent directors and officers.

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Explanation I.—The banker of a Company is not, as such, an officer within the meaning of this section.

Explanation II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

Penalty on falsification of books.

215. If any director, officer, or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Prosecution of delinquent directors in case of winding-up by Court.

216. Where any order is made for winding up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any

person interested in such winding-up or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company. Act VI. of 1882.

Penalty for false evidence.

217. If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition, or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Winding-up may be referred to District Court.

218. Where the High Court makes an order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Transfer of winding-up from one District Court to another.

219. If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

PART V.

REGISTRATION-OFFICE.

Constitution of registration-office.

220. The registration of Companies under this Act shall be conducted as follows (that is to say):—

(*a.*) The Local Government may, after the sanction of the Governor-General in Council to the creation of any such offices shall have been obtained, from time to time, appoint such Registrars, Assistant Registrars, clerks, and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure:

(*b.*) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks, and servants as aforesaid:

(*c.*) The Local Government may, from time to time, determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras, and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established;

(*d.*) The Local Government may, from time to time, direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies:

(*e.*) Every person may inspect the documents kept by the Registrar of Joint-stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a

Act VI. of 1882.

copy or extract of any other document, or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy, or extract, such fees as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract:

(*f*.) The existing Registrar, Assistant Registrars, clerks, and other officers and servants in the office for the registration of Joint-stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Local Government:

(*g*.) There shall be paid to any Registrar, Assistant Registrar, clerk, or servant that may hereafter be employed in the registration of Joint-stock Companies such salaries as the Local Government may, with the sanction of the Governor-General in Council, direct:

(*h*.) Whenever any act is herein directed to be done to or by the Registrar of Joint-stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS.

Application of Act to Companies formed under Act XIX. of 1857 or VII. of 1860.

221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX. of 1857 and Act No. VII. of 1860, or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and in the case of Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX. of 1857, and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Application of Act to Companies registered under Act XIX. of 1857 or VII. of 1860.

222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this

qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them. Act VI of 1882.

223. Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

Mode of transferring shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

224. With the exceptions made in the next following section and subject to the regulations therein contained, every Company existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament, or Act of the Governor-General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Companies capable of being registered.

225. The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say) :—

Regulations as to registration of existing Companies.

(*a*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, and not being a Joint-stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof :

(*b*) No Company having the liability of its members limited by Act of Parliament, or Act of the Governor-General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee :

(*c*) No Life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-stock Company as hereinafter defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by shares :

(*d*) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose :

(*e*) Where a Company, not having the liability of its members limited by Act of Parliament, or Act of the Governor-General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting :

(*f*) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the

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Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Definition of "Joint-stock Company."

226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Requisitions for registration by Companies.

227. Previously to the registration, in pursuance of this Part of this Act, of any Joint-stock Company, there shall be delivered to the Registrar the following documents (that is to say):—

(*a*) A list showing the names, addresses, and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(*b*) A copy of any Act of Parliament or Act of the Governor-General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company:

(*c*) If any such Joint-stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say):—

the nominal capital of the Company and the number of shares into which it is divided;

the number of shares taken and the amount paid on each share;

the name of the Company, with the addition of the word "limited" as the last word thereof;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing Company not being a Joint-stock Company.

228. Previously to the registration, in pursuance of this Part of this Act, of any Company not being a Joint-stock Company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor-General in Council, Letters Patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be

registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee. Act VI. of 1882.

Power for existing Company to register amount of stock instead of shares.

229. Where a Joint-stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing Companies.

230. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Registrar may require evidence as to nature of Company.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or is not a Joint-stock Company as hereinbefore defined.

On registration of banking Company with limited liability, notice to be given to customers.

232. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are, for the time being, interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain Companies from payment of fees.

233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor-General in Council, or by Letters Patent.

Company to change name.

234. Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Certificate of registration of existing Companies.

235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under

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his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate to be evidence of compliance with Act.

236. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Transfer of property to Company.

237. All such property, moveable and immoveable, including all interests and rights in, to, and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Registration under this Act not to affect obligations incurred previously to registration.

238. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, such Company previously to such registration.

Continuation of existing suits.

239. All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding up the Company.

Effect of registration under Act.

240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say):—

(*a*) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof:

(*b*) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-stock Company whose shares are not numbered: Act VI. of 1882.

(*c*) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council, or Act of the Governor-General in Council relating to the Company:

(*d*) That no Company shall have power, without the sanction of the Governor-General in Council, to alter any provision contained in any Letters Patent relating to the Company:

(*e*) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply:

(*f*) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company.

Power of Court to restrain further proceedings.

241. The Court may at any time after the presentation of a petition for winding up a Company registered in pursuance of this Part of this Act, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding up Company.

242. Where an order has been made for winding up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

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PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up unregistered Companies.

243. Subject as hereinafter mentioned, any Partnership, Association, or Company, except Railway Companies incorporated by Act of Parliament, or Act of the Governor-General in Council, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions :—

(1.) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding up of such Company, be deemed to be the registered office of the Company :

(2.) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court :

(3.) The circumstances under which an unregistered Company may be wound up are as follows (that is to say) :—

(*a*) whenever the Company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs ;

(*b*) whenever the Company is unable to pay its debts ;

(*c*) whenever the Court is of opinion that it is just and equitable that the Company should be wound up :

(4.) An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company, or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor ;

(*b*) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company

has not, within ten days after service of such notice, paid, secured, or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same ; Act VI. of 1882.

(*c*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied ;

(*d*) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

Who to be deemed a contributory in the event of Company being wound up.

244. In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the Company.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

Power of Court to restrain further proceedings.

245. The Court may, at any time after the making of an application for winding up an unregistered Company, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings, in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of order for winding up Company.

246. Where an order has been made for winding up an unregistered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

Provision in case of unregistered Company.

247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims, and rights into and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names ; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators

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may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the Company and recovering the property thereof.

Provisions of this Part of Act cumulative.

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

MISCELLANEOUS PROVISIONS.

Company not to buy its own shares.

249. No Company under this Act shall have power to buy its own shares.

Saving of existing proceedings for winding-up.

250. Where, previously to the commencement of this Act, an order has been made for winding up a Company under the Indian Companies Act, 1866, or a resolution has been passed for winding up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed; and, for the purposes of such winding-up, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Saving of conveyances.

251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed, or other instrument has been made in pursuance of the Indian Companies Act, 1866, such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Cognizance of offences.

252. All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Punishment of offences committed within Presidency-towns.

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

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Power to make orders as to costs.

253. Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of High Court to make rules.

254. The High Court may, from time to time, make rules, consistent with this Act and with the Code of Civil Procedure, concerning the mode of proceeding to be had for winding up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a Company.

Construction of "Registrar of Joint-stock Companies" in Act XXI. of 1860.

255. In sections 1 and 18 of Act No. XXI. of 1860 (*for the registration of Literary, Scientific, and Charitable Societies*), the words "Registrar of Joint-stock Companies" shall be construed to mean Registrar of Joint-stock Companies under this Act, or any Act for the time being in force.

Act not to apply to Bank of Bengal, Madras, or Bombay.

256. Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed, on payment of eight annas, or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

(4.) The directors may, from time to time, make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

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Transfers of Shares.

(8.) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

(9.) Shares in the Company shall be transferred in the following form :—

I, *A B*, of , in consideration of the sum of rupees paid to me by *C D*, of , do hereby transfer to the said *C D* the share (*or* shares) numbered standing in my name in the books of the Company, to hold unto the said *C D*, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands the day of .

(10.) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer-books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22.) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the direc-

tors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale. Act VI of 1882

Conversion of Shares into Stock.

(23.) The directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26.) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls and the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

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(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting.

(35.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38.) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44.) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, , of , being a member of the Company, Limited, and entitled to vote or votes, hereby appoint , of , as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) general meeting of the Company to be held on the day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held in the year). As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

(55.) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any Company which has entered into

contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If, at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if, at such adjourned meeting, the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on, from time to time, until their places are filled up.

(63.) The Company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69.) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72.) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the Company.

(74.) The directors may, before recommending any dividend, set aside, out of the profits of the Company, such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77.) No dividend shall bear interest as against the Company.

Accounts.

(78.) The directors shall cause true accounts to be kept—

of the stock-in-trade of the Company;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure takes place; and

of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year, and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83.) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the Company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

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(87.) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the Company, and shall, at all reasonable times, have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95.) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

DR. *Balance-sheet (a) of the* *Company made up to* *18* CR.

CAPITAL AND LIABILITIES.			Rs.	As.	PROPERTY AND ASSETS.			Rs.	As.
I. CAPITAL.		SHOWING—			III. PROPERTY HELD BY THE COMPANY.		SHOWING—		
	1	The number of shares				7	Immoveable property—distinguishing— ...		
	2	The amount paid per share...					(*a*) Freehold land		
	3	If any arrears of calls, the nature of the arrear, and the names of the defaulters					(*b*) „ buildings		
							(*c*) Leasehold		
	4	The particulars of any forfeited shares ...				8	Moveable property—distinguishing— ...		
							(*d*) Stock-in-trade		
		SHOWING—					(*e*) Plant		
							The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss		
II. DEBTS AND LIABILITIES OF THE COMPANY.	5	The amount of loans on mortgages or debenture-bonds							
	6	The amount of debts owing by the Company—distinguishing—			IV. DEBTS OWING TO THE COMPANY.		SHOWING—		
		(*a*) Debts for which acceptances have been given				9	Debts considered good for which the Company hold bills or other securities		
		(*b*) Debts to tradesmen for supplies of stock-in-trade or other articles				10	Debts considered good for which the Company hold no security		
		(*c*) Debts for law-expenses				11	Debts considered doubtful and bad		
		(*d*) Debts for interest on debentures or other loans					Any debt due from a director or other officer of the Company to be separately stated ...		
		(*e*) Unclaimed dividends							
		(*f*) Debts not enumerated above							
VI. RESERVE FUND.		SHOWING—			V. CASH AND INVESTMENTS.		SHOWING—		
		The amount set aside from profits to meet contingencies				12	The nature of investment and rate of interest ...		
						13	The amount of cash, where lodged, and if bearing interest		
VII. PROFIT AND LOSS.		SHOWING—							
		The disposable balance for payment of dividends, &c.							
CONTINGENT LIABILITIES.		Claims against the Company not acknowledged as debts							
		Moneys for which the Company is contingently liable							

(*a*) See clauses 81 and 82 of the foregoing Table A.

Act VI. of 1882.

TABLE B.

TABLE OF FEES to be paid to the Registrar of Joint-stock Companies by a Company having a capital divided into shares:—

	Rs.	A.	P.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital, (that is to say)—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 10,00,000 rupees	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association ...	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	5	0	0

TABLE C.

TABLE OF FEES to be paid to the Registrar of Joint-stock Companies by a Company not having a capital divided into shares:—

	Rs.	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20	40	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ...	100	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of ...	400	0	0

	Rs.	A.	P.
For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members, or less than 50 members, of such increase	5	0	0
Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	5	0	0

FORM D.

FORM OF STATEMENT REFERRED TO IN PART III. OF THE ACT.

* The Capital of the Company is Rs. divided into shares of each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the Company on the first day of January (*or* July) were :—

Debts owing to sundry persons by the Company :

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills, or hundís, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the Company on that day were :—

Government securities [*stating them*], Rs.

Bills of exchange, hundís, and promissory notes, Rs.

Cash at the bankers, Rs.

Other securities, Rs.

SECOND SCHEDULE.

(SEE SECTION 95.)

FORM A.

Memorandum of association of a Company limited by shares.

1st.—The name of the Company is "The Company, Limited."

2nd.—The registered office of the Company will be situate in

3rd.—The objects for which the Company is established are " and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—The liability of the members is limited.

5th.—The capital of the Company is Rs. divided into shares of Rs. each.

* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

Act VI. of 1882.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A.* *B.* of	
2. *C.* *D.* ,,	
3. *E.* *F.* ,,	
4. *G.* *H.* ,,	
5. *I.* *J.* ,,	
6. *K.* *L.* ,,	
7. *M.* *N.* ,,	
Total shares taken ...	

Dated the *day of*

Witness to the above signatures :

O. P. of

FORM B.

Memorandum and articles of association of a Company limited by guarantee, and not having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Mutual Calcutta Marine Association, Limited."

2nd.—The registered office of the Company will be situate in Calcutta.

3rd.—The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. *A.* *B.* of
2. *C.* *D.* ,,
3. *E.* *F.* ,,
4. *G.* *H.* ,,
5. *I.* *J.* ,,
6. *K.* *L.* ,,
7. *M.* *N.* ,,

Dated the *day of*

Witness to the above signatures :

O. P. of

Articles of Association to accompany preceding Memorandum of Association.

(1.) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say: if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation that no quorum shall in any case exceed thirty.

(13.) If, within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

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(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21.) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22.) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, , of , being a member of the Company, Limited, hereby appoint , of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof [*or* at any meeting of the Company that may be held in the year].

As witness my hand, this day of . Signed by the said in the presence of .

Directors.

(25.) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

(27.) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28.) The directors shall be elected annually by the Company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Accounts.

(29.) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30.) The first audit-committee shall be nominated by the directors out of the body of members. Act VI. of 1882.

(31.) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34.) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35.) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

(37.) The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by The Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. *A. B.* of ... ... Merchant.
2. *C. D.* of ... ... ,,
3. *E. F.* of ... ... ,,
4. *G. H.* of ... ... ,,
5. *I. J.* of ... ... ,,
6. *K. L.* of ... ... ,,
7. *M. N.* of ... ... ,,

Dated the *day of* *18* .

Witness to the above signatures :

O. P. of

FORM C.

Memorandum and articles of association of a Company limited by guarantee, and having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Hotel Company, Limited."

2nd.—The registered office of the Company will be situate in

3rd.—The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

Act VI. of 1882.

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 18 .

Witness to the above signatures :

O. P. of

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A. B.* of 2. *C. D.* of 3. *E. F.* of 4. *G. H.* of 5. *I. J.* of 6. *K. L.* of 7. *M. N.* of	
Total shares taken ...	

Dated the day of 18 .

Witness to the above signatures :

O. P. of

Memorandum and articles of association of an unlimited Company having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Patent Company."

2nd.—The registered office of the Company will be situate in.

3rd.—The objects for which the Company is established are "the working of a patent method of , of which method *O. P.* of , is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 18 .

Witness to the above signatures:

Q. R. of

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A. B.* of 2. *C. D.* of 3. *E. F.* of 4. *G. H.* of 5. *I. J.* of 6. *K. L.* of 7. *M. N.* of	
Total shares taken ...	

Dated the day of 18 .

Witness to the above signatures:

Q. R. of

FORM E.

As required by the second part of the foregoing Act.

Summary of capital and shares of the Company made up to the day of .

Nominal capital Rs. , divided into shares of Rs. each.

Number of shares taken up to the day of .

There has been called up on each share Rs. .

Total amount of calls received Rs. .

Total amount of calls unpaid Rs. .

List of persons holding shares in the Company on the day of and of persons who have held shares therein at any time during the year immediately preceding the said day of showing their names and addresses, and an account of the shares so held.

Folio in register ledger containing particulars.	Names, Addresses, and Occupations.				Account of Shares.					Remarks.
	Surname.	Christian name.	Address.	Occupation.	Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.		
						Number.	Date of transfer.	Number.	Date of transfer.	

ACT VII. OF 1882.

POWERS-OF-ATTORNEY ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1882.

An Act to amend the law relating to Powers-of-Attorney.

Preamble. FOR the purpose of amending the law relating to Powers-of-attorney; It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Powers-of-Attorney Act, 1882:"

Local extent. It applies to the whole of British India;

Commencement. and it shall come into force on the 1st day of May 1882.

Execution under power-of-attorney. **2.** The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Payment by attorney under power, without notice of death, &c., good. **3.** Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation, was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of original instruments creating powers-of-attorney. **4.** (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(*b*) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

Act VIII. of 1882.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument, and of the deposit thereof in the High Court.

(*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (*a*), (*b*), and (*c*).

(*f*) Throughout British Burma, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court.

(*g*) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

Power-of-attorney of married woman.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument, or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. [*Repealed by Act XII. of 1891.*]

ACT VIII. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND MARCH 1882.

An Act to amend the Indian Penal Code.

Preamble.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

Amendment of section 40, clause 2, of Indian Penal Code.

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "64, 65, 66, 71" shall be inserted.

Amendment of section 64 of same Code.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

"and in every case of an offence punishable with fine only, in which the offender is sentenced to a fine."

Amendment of section 67 of same Code.

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

Addition to section 71 of same Code.

4. To section 71 of the said Code, the following clause shall be added:—

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Amendment of section 73 of same Code.

5. In section 73 of the said Code, for the words "be less than a," the words "shall not exceed one" shall be substituted.

New Exception to section 214 of same Code.

6. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"*Exception.*—The provision of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

Amendment of section 309 of same Code.

7. In section 309 of the said Code, for the last seven words, the words "or with fine or with both" shall be substituted.

Amendment of section 335 of same Code.

8. In section 335 of the said Code, before the words "causes," the word "voluntarily" shall be inserted.

Amendment of section 410 of same Code.

9. In section 410 of the said Code, after the words "designated as 'stolen property'" the following words shall be inserted, namely, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India;" and the words "offence of" shall be omitted.

Addition to section 435 of same Code.

10. In section 435 of the said Code, after the words "or upwards," the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

Local extent.
Commencement.

11. This Act extends to the whole of British India; and shall come into force on the first day of January 1883.

ACT IX. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND MARCH 1882.

An Act to amend the Prisoners' Act, 1871.

Preamble.

WHEREAS it is expedient to amend Act No. V. of 1871 (*to consolidate the laws relating to Prisoners confined by order of a Court*); It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Prisoners' Act Amendment Act, 1882:"

Local extent.

it extends to the whole of British India:

Commencement.

and it shall come into force on the first day of January 1883.

Section substituted for section 33, Act V. of 1871.

2. For section 33 of the said Act the following shall be substituted (namely):—

[*Printed in Vol. I., p. 902.*]

THE NEW CODE OF CRIMINAL PROCEDURE.

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SCHEDULES.

Act X. of 1882.

THE NEW CODE OF CRIMINAL PROCEDURE.

ACT X. OF 1882.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH MARCH 1882.

An Act to Consolidate and Amend the Law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882;" and shall come into force on the first day of January 1883;

Local extent.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras, and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) [*Repealed by the Cantonments Act (XIII. of 1889).*†]

(*c*) heads of villages in the Presidency of Fort St. George; or

(*d*) village police-officers in the Presidency of Bombay;

---

* The Code has been extended with certain modifications to Upper Burmah (except the Shan States) by Reg. VII. of 1886.

It has also been declared in force in the Sonthal Pergunnahs by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2.

It has been amended in its application to the Andaman and Nicobar Islands by Reg. III. of 1876, s. 13, as amended by Reg. I. of 1884, s. 3.

The Code has been declared (under the Assam Frontier Tracts Regulation, II. of 1880, as extended by Reg. III. of 1884) to have ceased to be in force in the Naga Hills, the Dibrugarh Frontier Tract, and the North Cachar Hills—see Assam Gazette, May 10, 1884, Pt. II., p. 212; in the Garo Hills District and the Khasi and Jaintia Hills District—see Assam Gazette, Nov. 22, 1884, Pt. I., p. 670; and in the Mikri Hills Tract—see Assam Gazette, Nov. 29, 1884, Pt. II., p. 705.

References to the Code in other enactments are to be read as if made to it as amended by Act III. of 1884.—See s. 14 (*z*) of that Act.

† The repealed clause (*b*) ran as follows:—

(*b*) any officer duly authorized to try petty offences in military bazars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay, respectively.

(e) [*Repealed by Act V. of 1889 (an Act to abolish the office of Coroner of Madras).**] Act X. of 1882.

2. On and from the first day of January 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Repeal of enactments.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.

Notifications, &c., under repealed Acts.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV. of 1861, or Act No. X. of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code, or to its corresponding chapter or section.

Reference to Code of Criminal Procedure and other repealed enactments.

In every enactment passed before this Code comes into force, the expressions, "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a Division of a District" shall be deemed to mean "Sub-divisional Magistrate;" the expression "Magistrate of the District;" shall be deemed to mean "District Magistrate;" and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Expressions in former Acts.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

Interpretation-clause.

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police-officer:

"Complaint:"

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or police-officer) who is authorized by a Magistrate in this behalf:

"Investigation:"

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

"Inquiry."

(*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken.

"Judicial proceeding:"

---

* The repealed clause (*e*) ran as follows:—

(*e*) and nothing in sections 174, 175, and 176 shall apply to the police in the town of Madras.

Act X of 1882.

"Writing" and "written": (e) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance:

"Sub-division": (f) "Sub-division" means a sub-division, made under this Code, of a District:

"Province": (g) "Province" means the territories for the time being under the administration of any Local Government:

"Presidency-town": (h) "Presidency-town" means the local limits, for the time being, of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay.

"High Court": (i) "High Court"* means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab, and the Recorder of Rangoon:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf:

"Chief Justice": (j) "Chief Justice" includes also "the senior Judge of the Chief Court of the Punjab and the Recorder of Rangoon:"†

"Advocate-General": (k) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may from time to time, appoint in this behalf:

"Clerk of the Crown": (l) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

"Public Prosecutor": (m) "Public Prosecutor" means any person appointed under section 492 and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Pleader": (n) "Pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

---

* For the meaning of "High Court" in Upper Burma, see Reg. VII. of 1886, sch., s. 1.

† The words quoted have been substituted for the words "the senior Judge of a Chief Court," as originally enacted.—See Lower Burma Courts Act (XI. of 1889), s. 97 and sch.

Act X. of 1882.

(*o*.) "Police-station" means any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "officer in charge of a police-station"* includes, when the officer in charge of the police-station is absent "from the station-house,"† or unable from illness to perform his duties, the police-officer "present at the station-house,"‡ who is next in rank to such officer, and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present:

"Police-station."

"Officer in charge of a police-station:"

(*p*.) "Offence" means any act or omission made punishable by any law for the time being in force:

"Offence:"

(*q*.) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Cognizable offence:"

"Cognizable case:"

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without the Presidency-towns, may not arrest without warrant:

"Non-cognizable offence:"

"Non-cognizable case:"

(*r*.) "Bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

"Bailable offence:"

"Non-bailable offence:"

(*s*.) "Warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months:

"Warrant-case:"

(*t*.) "Summons-case" means a case relating to an offence not so punishable:

"Summons-case."

(*u*.) "European British subject" means—

(1) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

"European British subject:"

(2) any child or grand-child of any such person by legitimate descent:

(*v*.) "Chapter" means a chapter of this Code; and "schedule" means a schedule hereto annexed:

"Chapter:"

"Schedule:"

(*w*.) "Place" includes also a house, building, tent, and vessel.

"Place:"

Words which refer to acts done extend also to illegal omissions; and

Words referring to acts.

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* For meaning of "officer in charge of a police-station" in Upper Burma, see Reg. VII. of 1886, sch., s. 2.

† The words quoted have been substituted for the word "therefrom" as originally enacted.—See Act V. of 1887, s. 1.

‡ The words quoted have been substituted for the words "present at the police-station," as originally enacted.—See Act V. of 1887, s. 1.

Act X of 1882.

all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Words to have same meaning as in Penal Code.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

Trial of offences under Penal Code.

Trial of offences against other laws.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

Classes of Criminal Courts.

I.—Courts of Session :

II.—Courts of Presidency Magistrates :

III.—Courts of Magistrates of the first class :

IV.—Courts of Magistrates of the second class :

V.—Courts of Magistrates of the third class :

B.—Territorial Divisions.

7.* Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions ;

Sessions Divisions.

and every Sessions Division shall, for the purposes of this Code, be a District, or consist of Districts.

Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number of such Divisions and Districts.

Power to alter Divisions and Disfricts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency-towns to be deemed Districts.

* As to Courts of Session in Upper Burma, see Reg. VII. of 1886, sch., s. 3.

Act X. of 1882.

Power to divide Districts into Sub-divisions.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

Existing Sub-divisions maintained.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

Court of Session.

9.* The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges, and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

The Local Government may delegate its powers under this section to the District Magistrate.

Special Magistrates.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third

* As to Courts of Session in Upper Burma, see. Reg. VII. of 1886, sch., s. 3.

Act X. of 1882.

class, in respect to particular cases, or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.*

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exerciseable by Bench in absence of special direction.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Magistrates and Benches to District Magistrate ;

17. All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

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* Notwithstanding anything contained in s. 14, any police-officer in Assam, not below the grade of Assistant District Superintendent, may be invested with all or any of the powers conferred or conferrible on a Magistrate of the first, second, or third class in respect to non-cognizable cases.—See Reg. II. of 1883, s. 4.

As to conferment of magisterial powers on police-officers in Upper Burma, see Reg. VII. of 1886, sch., s. 4.

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination to Sub-divisional Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Subordination of Assistant Sessions Judges to Sessions Judge.

Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15, shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Appointment of Presidency Magistrates.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Local limits of their jurisdiction.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April 1877, was exercised in that town by the Court of Petty Sessions:

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise, within the local limits of his jurisdiction, all the powers conferred on him by this Code, or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

22. The Governor-General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

Justices of the Peace for the mufassal.

Act X. of 1882.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor-General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace, within the limits of the town mentioned in such notification, any persons resident within British India, and not being the subjects of any foreign State, whom such Governor-General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex-officio Justices of the Peace.

25. In virtue of their respective offices, the Governor-General, the Ordinary Members of the Council of the Governor-General, the Judges of the High Courts, and the Recorder of Rangoon, are Justices of the Peace within and for the whole of British India; "Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving;" * and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

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* The words quoted are inserted by Act III. of 1884, s. 1.

CHAPTER III.

Act X. of 1882.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session, or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Offences under other laws.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge, or Joint Sessions Judge, may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years; but "any sentence of imprisonment for a term exceeding four years, and any sentence of transportation"* passed by an Assistant Sessions Judge, shall be subject to confirmation by the Sessions Judge.

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* The words quoted have been substituted by Act X. of 1886, s. 1, for the words "any sentence of imprisonment for a term exceeding three years."

Act X. of 1882.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:
- Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law;
- Fine not exceeding one thousand rupees;
- Whipping.*

(*b*) Courts of Magistrates of the second class:
- Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law;
- Fine not exceeding two hundred rupees;
- Whipping.

(*c*) Courts of Magistrates of the third class.
- Imprisonment for a term not exceeding one month;
- Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping, unless he is specially empowered in this behalf by the Local Government.

Power of Magistrates to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code.

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34.† The Court of a District Magistrate specially empowered under section 30 may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge.‡

Sentence in cases of conviction of several offences at one trial.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such

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* As to powers of Magistrates in Upper Burma to pass sentences of whipping, see Reg. VII. of 1886, sch., s. 5; but as to European British subjects, see s 22, *ib.*

† S. 34 has been substituted by Act X. of 1886, s. 2, for the one originally enacted.

‡ In places where the Punjab Frontier Crimes Regulation, 1887, is in force, a sentence passed by a District Magistrate or Additional District Magistrate in exercise of the power to try as a Magistrate any offence not punishable with death is not subject to confirmation by the Sessions Judge.—See Reg. IV. of 1887, s. 7 (*l*).

punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct. Act X. of 1882.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Maximum term of punishment.

Provided as follows :—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years :

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36.* All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second, and third classes, have the powers hereinafter respectively conferred upon them, and specified in the third schedule. Such powers are called their "ordinary powers."

Additional powers conferrible on Magistrates.

37.* In addition to his ordinary powers, any Sub-divisional Magistrate, or any Magistrate of the first, second, or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrate's investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance, and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

Continuance of powers of officers transferred.

40. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Code throughout any local area, is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Powers may be cancelled.

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

* As to powers of Magistrates in Upper Burma, see Reg. VII. of 1886, sch., s. 6; but as to European British subjects, see s. 22, *ib.*

Act X. of 1882.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the Presidency-towns,—

(*a*) in the taking of any other person whom such Magistrate or police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph, or public property; or

(*c*) in the suppression of a riot or an affray.

Aid to person other than police-officer executing warrant.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand, and acting in the execution of the warrant.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, namely, 121, 121A, 122, 123, 124, 124A, 125, 126, 130, "143, 144, 145, 147, 148,"* 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

Any act committed, at any place out of British India, which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460, shall be deemed to be an offence for the purposes of this section.†

Village-headmen, accountants, landholders, and others bound to report certain matters.

45.‡ Every village-headman, village-accountant, village-watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

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* In s. 44 the figures quoted have been inserted by Act X. of 1894, s. 1.

† This paragraph has been added by Act III. of 1894, s. 1.

‡ In s. 45 that part of it which begins with the words, "Every village-headman," and ends with the words, "under suspicious circumstances," has been substituted for the original by Act X. of 1894, s. 2 (*f*).

In Upper Burma the following has been substituted for s. 45 by Reg. XIV. of 1887, s. 4:—

Village-headman bound to report certain matters.

"45. A headman appointed under the Upper Burma Village Regulation, 1887, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station or military post, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent; Act X of 1882.

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender;

(*c*) the commission of, or intention to commit, in or near such village, any non-bailable offence, or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code;

(*d*) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances;

(*e*) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian

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(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in his village;

(*b*) the resort to any place within, or the passage through, his village of any person whom he knows, or reasonably suspects, to be a dacoit, robber, escaped convict, or proclaimed offender;

(*c*) the commission of, or attempt or intention to commit, within his village, any of the following offences, namely:—

(i) murder,

(ii) culpable homicide not amounting to murder,

(iii) dacoity,

(iv) robbery,

(v) offence against the Indian Arms Act, 1878, and

(vi) any other offence respecting which the Deputy Commissioner by general or special order, made with the previous sanction of the Commissioner, directs him to communicate information;

(*d*) the occurrence in his village of any sudden or unnatural death, or of any death under suspicious circumstances.

Explanation.—In this section 'village' has the meaning assigned to that word in the Upper Burma Village Regulation, 1887."

In such places in Lower Burma, where s. 5 of Act III. of 1889 (Lower Burma Village Act) is notified to be in force, for s. 45 of the Code, the following shall be substituted, namely:—

"45. (*1*) A headman appointed under the Lower Burma Village Act, 1889, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station or military post, whichever is the nearer, any information which he may obtain respecting—

Headman bound to report certain matters.

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in his village;

(*b*) the resort to any place within, or the passage through, his village of any person whom he knows, or reasonably suspects, to be a dacoit, robber, escaped convict, or proclaimed offender;

(*c*) the commission of, or attempt or intention to commit, within his village, any of the following offences, namely:—

(i) murder,

(ii) culpable homicide not amounting to murder,

(iii) dacoity,

(iv) robbery,

(v) offence against the Indian Arms Act, 1878, and

(vi) any other offence respecting which the Deputy Commissioner by general or special order, made with the previous sanction of the Commissioner, directs him to communicate information;

(*d*) the occurrence in his village of any sudden or unnatural death, or of any death under suspicious circumstances.

"(*2*) In sub-section (*1*) 'village' has the meaning assigned to that word in the Lower Burma Village Act, 1889."

Act X. of 1882.

Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

In this section—

(i) "village" includes village-lands; and

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.*

(*f*) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property, respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.†

Appointment of village-headmen by District Magistrate in certain cases for purposes of section 45.

45A.‡ Subject to rules in this behalf to be made by the Local Government, the District Magistrate may, from time to time, appoint one or more persons to be village-headmen for the purposes of the last foregoing section in any village for which there is no such headman appointed under any other law.

CHAPTER V.

OF ARREST, ESCAPE, AND RETAKING.

A.—Arrest generally.

Arrest how made.

46.§ In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

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* In s. 45, cl. *e* and the two explanatory sub-clauses have been added by Act III. of 1894, s. 2, and substituted for the explanation as originally enacted. The original explanation was as follows:

"EXPLANATION.—In this section 'village' includes village-lands."

† In s. 45, cl. *f* has been inserted by Act X. of 1894, s. 2 (*2*).

‡ S. 45A has been added by Act X. of 1894, s. 2 (*3*).

§ In places where the Punjab Frontier Crimes Regulation, 1887, is in force, s. 46 is to be read as if the following were added to it, namely:—

"But this section gives a right to cause the death of a person against whom those portions of the Punjab Frontier Crimes Regulation, 1887, which are not of general application, may be enforced—

(*a*) if he is committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as to afford reasonable ground for believing that he intends to use arms to effect his purpose; or

(*b*) if a hue-and-cry has been raised against him of his having been concerned in any such offence as is specified in the last foregoing paragraph of this section, or of his committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as are referred to in clause (*a*) of this paragraph."
—See Reg. IV. of 1887, s. 37 (*2*).

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place, and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested, or of any other person, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Breaking open zanana.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment, and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself, or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles other than necessary wearing apparel found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all

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weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police-officer may, without an order from a Magistrate, and without a warrant, arrest—

first—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender, either under this Code, or by order of the Local Government;

fourthly—any person in whose possession anything is found, which may reasonably be suspected to be stolen property, and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;*

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, "or of belonging to Her Majesty's Indian Marine Service, and being illegally absent from that service;"† and

seventhly—any person who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India.*

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, &c.

55.‡ Any officer in charge of a police-station may, in like manner, arrest, or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or,

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

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* In clause *fifthly* the word "and" has here been repealed and added to clause *sixthly*, and clause *seventhly* has been inserted after clause *sixthly*, by Act III. of 1894, s. 3.

† The words quoted have been added by Act XIV. of 1887 (Indian Marine Act), s. 78.

‡ In Upper Burma the powers conferred on an officer in charge of a police-station by s. 55 may be exercised by any police-officer.—See Reg. VII. of 1886, sch., s. 7.

(*c*) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury. Act X. of 1882.

This section applies to the police in the towns of Calcutta and Bombay.*

Procedure when police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

This section applies to the police in the towns of Calcutta and Bombay.*

Refusal to give name and residence.

57.† When any person in the presence of a police officer commits, or is accused of committing, a non-cognizable offence, and refuses, on demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a police-officer; or, in the absence of a police-officer, take such person to the nearest police-station.

If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses, on the demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Person arrested to be taken before Magistrate or officer in charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

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* This clause has been added by Act X. of 1886, s. 3.

† As to power of detention by police in Upper Burma, see Reg. VII. of 1886, sch., s. 8.

Act X. of 1882.

61.* No police-officer shall detain in custody a person arrested without warrant for a longer period than, under all the circumstances of the case, is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Discharge of person apprehended.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest, or order any person to arrest, the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

65. Any Magistrate may at any time arrest, or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by, or in presence of, Magistrate.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Power, on escape, to pursue and retake.

67. The provisions of sections 47, 48, and 49, shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant, and is not a police-officer having authority to arrest.

Provisions of sections 47, 48, and 49 to apply to arrests under section 66.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct.

Form of summons.

Such summons shall be served by a police-officer, or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

Summons by whom served.

This section applies to the police in the towns of Calcutta and Bombay.

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* As to power of detention by police in Upper Burma, see Reg. VII. of 1886, sch., s. 8.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Summons how served.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Signature of receipt for summons.

70. Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

71. If the signature mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Service on servant of Government or of Railway Company.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons, in duplicate, to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct, unless and until the contrary is proved.

Proof of service in such cases, and when serving officer not present.

The affidavit mentioned in this section may be attached to the duplicate of the summons, and returned to the Court.

B.—Warrant of Arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Form of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

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Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may, in its discretion, direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily be directed to one or more police-officers, and when issued by a Presidency Magistrate shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary, and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, &c.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer, or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer, or manager, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to police-officer.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

84. When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police-officer for execution outside jurisdiction.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued.

86 Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Procedure by Magistrate before whom person arrested is brought.

Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written pro-

Proclamation for person absconding.

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clamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation, to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation, under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate "or Chief Presidency Magistrate,"* within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate; and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date

* The words quoted have been inserted by Act X. of 1886, s. 4.

of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold, whenever it thinks fit.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88 appears voluntarily, or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded, or will not obey the summons; or

(*b*) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter, relating to a summons and warrant, and their issue, service, and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any inves-

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tigation, inquiry, trial, or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram, or other document in the custody of the Postal or Telegraph Authorities.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph Authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for, and to detain, such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94, or a requisition under section 95, paragraph 1, has been or might be addressed, will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial, or other proceeding under this Code, will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph Authorities.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, &c.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information, and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps, or for forging, Act X, of 1882.

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may, by his warrant, authorize any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot, until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments, or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been, or to be intended to be, used for counterfeiting coin or stamps, or for forging.

"The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply, respectively, to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

(*b*) pieces of metal suspected to have been so made, or to have been so brought into British India, or to be intended to be issued in contravention of the former of those Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act."*

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be

* The paragraph quoted has been added by the Metal Tokens Act (I. of 1889), s. 7.

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immediately taken before such Magistrate; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of Persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.—General Provisions relating to Searches.

Direction, &c., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83, and 84, shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search, and of the places in which they are respectively found, shall be prepared by such officer or other person, and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

Act X. of 1882.

PREVENTION OF OFFENCES.

CHAPTER VIII.*

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting, assault, or other breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures, with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases, and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is, within such limits, a person who is likely to commit a breach of the peace, or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

* In places where the Punjab Frontier Crimes Regulation, 1887, is in force, ss. 39 to 45 (both inclusive) of that Regulation are to be read with, and construed as part of, this chapter.—See Reg. IV. of 1887, s. 46.

Act X, of 1882.

A Magistrate before whom a person is sent under this section may, in his discretion, detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding six months, as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, "or Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government,"* receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or, in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Order to be made.

112. When a Magistrate acting under section 107, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

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* The words quoted have been substituted by Act X of 1886, s. 5, for the words "Sub-divisional Magistrate, or Magistrate of the first class specially empowered in this behalf by the Local Government," which were originally enacted.

Act X of 1882.

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

117. When an order under section 112 has been read or explained, under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section, the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Order to give security.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive:

thirdly—that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person informed against.

119. If, on an enquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Act X. of 1882.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be; and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of security.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires, or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings, and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the

orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged. Act X. of 1882.

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his district not superior to his Court.

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear, or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

127. Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the police in the towns of Calcutta and Bombay.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army, or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-Commissioned Officer in command of any soldiers in Her Majesty's Army, or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by

Act X. of 1882.

military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly, and arresting and detaining such persons.

Power of Commissioned Military Officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly, or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, Military Officer, police-officer, soldier, or volunteer, for any act purporting to be done under this chapter, shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and

(*a*) no Magistrate or police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.*

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel, which is, or may be, lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandize, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

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* Ch. X. has been extended to the City of Madras by Mad. Act VII. of 1884, s. 29.

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood, or passing by, and that, in consequence, its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandize, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandize; or

to prevent or stop the construction of such building; or

to remove, repair, or support it; or

to alter the disposal of such substance; or

to fence such tank, well, or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside, or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135. The person against whom such order is made shall—

Person to whom order is addressed to obey;

(*a*) perform, within the time specified in the order, the act directed thereby; or

or show cause or claim jury.

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence of his failing to do so.

136. If such person does not perform such act, or appear and show cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

Act X. of 1882.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury, or a majority of the jurors, find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury, or omission to return verdict.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if, from any cause, the jury appointed do not return their verdict within the time fixed, or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section. Act X. of 1882.

Magistrate may prohibit repetition or continuance of public nuisances.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance as defined in the Indian Penal Code or any special or local law.

CHAPTER XI.*

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by written order stating the material facts of the case, and served in manner provided by section 134, direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray.

An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself, or any Magistrate subordinate to him, or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

145. Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate,

* Ch. XI. has been extended to the City of Madras by Mad. Act VII. of 1884, s. 29.

Act V, of 1887. and to put in written statements of their respective claims, as respects the fact of actual possession of the subject of dispute.

Inquiry as to possession.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Party in possession to retain possession until legally evicted.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists, or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

Power to attach subject of dispute.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Disputes concerning easements, &c.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do, or prevent the doing, of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless the right has been exercised during the season next before such institution.

Local inquiry.

148 Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees or both, the Magistrate passing a decision under section 145, section 146, or section 147, may direct by whom such costs shall be paid, whether

by such party, or by any other party, to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines. Act X. of 1882.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Information of design to commit such offences.

150 Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152. A police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark, or buoy, or other mark used for navigation.

Inspection of weights and measures.

153. Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing, which are false.

If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him, or under his direction, and be read over to the informant; and every such information, whether given in writing, or reduced to writing, as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Act X. of 1882.

Information in non-cognizable cases.

155. When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter, in a book to be kept as aforesaid, the substance of such information, and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case, or commit the same for trial, or of a Presidency Magistrate.

Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

Investigation into cognizable cases.

156. Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV. relating to the place of inquiry or trial.

No proceeding of a police-officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Procedure where cognizable offence suspected.

157. If from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided as follows:

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Where police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

Reports under section 157 how submitted.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

161. Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Examination of witnesses by police.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

162.* No statement, other than a dying declaration, made by any person to a police-officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it, or "shall"† be used as evidence against the accused.

Statements to police not to be signed or admitted in evidence.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

163. No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat, or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

But no police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free will.

164. Any Magistrate, not being a police-officer, may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Power to record statements and confessions.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

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* The first para. of s. 162 does not apply to a statement made to a police-officer in Upper Burma who is a Magistrate.—See Reg. VII. of 1886, sch., s. 9.

† This word has been inserted by Act X. of 1886, s. 6.

Act X of 1882.

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) A. B.,
Magistrate."

Search by police-officer.

165. Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 91 has been, or might be, issued will not, or would not, produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

When officer in charge of police-station may require another to issue search-warrant.

166. An officer in charge of a police station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found (if any) to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused, or commit him for trial.

Case to be sent to Magistrate, when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused, or commit him for trial; or, if the offence is bailable, and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate, under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any), and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond.

Act X. of 1882.

Recusant complainant or witness may be forwarded in custody,

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. Every police-officer making an investigation under this chapter shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the police-diaries, of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161, or section 145, as the case may be, shall apply.

Report of police-officer.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

"Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government, by general or special order, so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."*

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, &c.

174† Every officer in charge of a police-station, on receiving information that a person—

(*a*) has committed suicide, or

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* This paragraph has been substituted by Act X. of 1886, s. 7, for the one originally enacted.

† Ss. 174, 175, and 176, shall, in their application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras, be read as follows (see Act V. of 1889, s. 4) :—

Enquiry into violent or suspicious death to be ordinarily conducted by officer in charge of police-station.

"174. (*1*) An officer in charge of a police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or Act X of 1882.

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the Commissioner of Police, and, in the absence of any rule or order under the next following section to the contrary, proceed to the place where the body of such deceased person is, and there, in the presence of five or more respectable inhabitants of the neighbourhood, make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

"(*2*) The report shall be signed by such police-officer and other persons or by so many of them as concur therein, and shall be forthwith forwarded to the office of the Commissioner of Police.

"(*3*) In any of the following cases, namely—

(*a*) in any case in which the Local Government may by rule so require,

(*b*) in any case in which death appears to have been caused by violence, or there is any doubt regarding the cause of death,

(*c*) in any other case in which the police-officer considers it expedient so to do,

he shall cause the body to be examined by a medical officer appointed in this behalf by the Local Government.

"(*4*) The police-officer may, by order in writing, summon five or more persons as aforesaid for the purpose of the investigation under this section, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

"(*5*) If the facts do not disclose a cognizable offence to which section 170 applies such persons shall not be required by the police-officer to attend a Magistrate's Court.

Power to make rules and orders with respect to investigations by other authorities than officers in charge of police-stations.

"175. (*1*) The Local Government may make rules, and the Commissioner of Police may, from time to time, make general or special orders consistent with those rules, defining—

(*a*) the circumstances in which an officer in charge of a police-station, after giving intimation to the Commissioner of Police of any such event as is mentioned in clause (*a*), clause (*b*), or clause (*c*), of sub-section (*1*) of the last foregoing section, is not to proceed to discharge any of the further functions of such an officer under that section, and

(*b*) the circumstances in which, and in such circumstances, the authority by whom, those further functions are to be discharged.

"(*2*) The authority to whom the discharge of such further functions may be entrusted by rules or orders under sub-section (*1*) may be the Commissioner of Police, or any of his Deputies or Assistants, or any other police-officer of rank not below that of Inspector, and such authority, in discharge of those functions, may exercise any of the powers, and shall perform the duties, which, but for such rules or orders, might be exercised and should be performed by the officer in charge of the police-station.

Provisions with respect to inquiries by Presidency Magistrates and the disinterment of dead bodies.

"176. (*1*) The Chief Presidency Magistrate, or such other Presidency Magistrate as the Chief Presidency Magistrate may depute in this behalf, shall, when any person dies while in the custody of the police or in prison, and may in any other case mentioned in section 174, sub-section (*1*), clause (*a*), clause (*b*), or clause (*c*), hold an inquiry into the cause of death, either instead of, or in addition to, the investigation under either of the two last foregoing sections; and, where he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, and shall record any evidence taken by him in the course of the inquiry as nearly as may be in the manner prescribed in section 362.

"(*2*) Whenever the Commissioner of Police or a Presidency Magistrate considers it expedient, for the discovery of the cause of the death of a deceased person whose body has been interred, that an examination should be made of the dead body, such Commissioner or Magistrate, as the case may be, may cause the body to be disinterred and examined."

Act X. of 1882.

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when, for any other reason, the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Power to summon persons.

175. An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. When any person dies, while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in section 174, clauses (*a*), (*b*), and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Act X. of 1882.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done, or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a.*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b.*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days, within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y, or Z.

(*c.*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a.*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b.*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

Act X of 1882.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Stealing.

182. When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain,

where an offence is committed partly in one local area and partly in another, or

or not in one district only,

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or where offence is continuing,

where it consists of several acts done in different local areas,

or consists of several acts.

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office, or Arms and Ammunition, may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-office, and Arms Acts.

185. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court. Act X. of 1882.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India,

Act X. of 1882.

shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"Political Agent" defined.

190. In sections 188 and 189, the expression "Political Agent" means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or* Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police-report of such facts;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

When a Magistrate takes cognizance of an offence under clause (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate, or committed to the Court of Session †

Transfer of cases by Magistrates.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

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* In s. 191 the word "or" has been inserted by Act XII. of 1891.

† The last paragraph of s. 191 has been added by Act III. of 1884, s. 2.

Any District Magistrate may empower any Magistrate of the first class, who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly. Act X. of 1882.

193.* Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cognizance of offences by Courts of Session.

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Cases to be tried by Additional and Joint Sessions Judges:

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

by Assistant Sessions Judges.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Cognizance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for contempts of lawful authority of public servants.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228, of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463, or punishable under section 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

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* For procedure of Courts of Session in Upper Burma, see Reg. VII. of 1886, sch., s: 3 (2); but, as to European British subjects, see s. 22, *ib.*

Act X. of 1882.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court; and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Prosecution for offences against the State.

196.* No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removeable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation, and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for adultery or enticing a married woman.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

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* As to State offences and false evidence by person to whom pardon has been tendered in Upper Burma, see Reg. VII. of 1886, sch., s. 10; but, as to European British subjects, see s. 22, *ib.*

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint has been made in writing, and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Postponement of issue of process.

202 If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may, from time to time, authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant, has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.

Act X. of 1882.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion at any stage of the proceedings, direct the personal attendance of the accused and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or* Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take, in manner hereinafter provided, all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Process for production of further evidence.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

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* In s. 206 the word "or" has been inserted by Act XII. of 1891.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons. Act X of 1882.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. When, upon such evidence being taken, and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained, and copy furnished to accused.

As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown, a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

213. When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Act X. of 1882.

Quashing commitments under section 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211, and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed:

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance, when called upon, at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c., to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry, and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over, in manner hereinbefore provided, to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost. Act X. of 1882.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence, sufficient description.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English, or in the language of the Court.

Language of charge.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Previous conviction when to be set out.

Illustrations.

(*a.*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

Act X of 1882.

(*d.*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place, and person.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged, and the law infringed.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded, at any stage of the case, as material, unless the accused was misled by such error or omission.

Effect of errors.

Illustrations.

(*a.*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was, in fact, misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*.) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial. Act X of 1882.

(*e*.) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge as the case may be, having regard to the rules contained in this Code as to the form of charges.

Court may alter charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution or offence in altered charge require previous sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine, with reference to such alteration, any witness who may have been examined.

Effect of material error.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision, or of its powers under Chapter XXVII., is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Act X. of 1882. If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

233. For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Three offences of same kind within year may be charged together.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial for more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

II.—Offence falling within two definitions.

III.—If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

III.—Acts constituting one offence, but constituting when combined, a different offence.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations.

to paragraph I.

(*a.*) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code. Act X. of 1882.

(*c*.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 491 of the Indian Penal Code.

(*d*.) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(*e*.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*.) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.

(*h*.) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II.

(*i*.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466), and 196 of the same Code.

to paragraph III.

(*m*.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.

Where it is doubtful what offence has been committed.

236. If a single act, or series of acts, is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen

Act X of 1882.

property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence, referred to in section 198 or section 199, when no complaint has been made, as required by that section.

Illustrations.

(*a.*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b.*) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Act X. of 1882.

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused, and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Acquittal.

245. If the Magistrate, upon taking the evidence referred to in section 244, and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Finding not limited by complaint or summons.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Act X. of 1882.

Non-appearance of complainant.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Withdrawal of complaint.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

250.* [*Repealed by Act IV. of 1891.*]

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

253. If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has com-

* S. 250, which related to frivolous or vexatious complaints, has been re-enacted with modifications as s. 560, *infra*.

mitted an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Act X of 1882.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate shall file it with the record.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process, unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Process for compelling production of evidence at instance of accused.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. If, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If, in any such case, the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Conviction.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything herein before contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

260.* Notwithstanding anything contained in this Code,—

Power to try summarily.

(1) the District Magistrate,

* As to powers of Magistrates in Upper Burma, see Reg. VII. of 1886, sch., s. 6; but as to European British subjects, see s., 22, *ib.*

Act X. of 1882.

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government,

may try, in a summary way, all or any of the following offences:—

(*a.*) Offences not punishable with death, transportation, or imprisonment for a term exceeding six months;

(*b.*) Offences relating to weights and measures, under sections 264, 265, and 266 of the Indian Penal Code;

(*c.*) Hurt, under section 323 of the same Code;

(*d.*) Theft, under section 379, 380, or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e.*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f.*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g.*) Mischief, under section 427 of the same Code;

(*h.*) House-trespass, under section 448 of the same Code;

(*i.*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the same Code;

(*j.*) Abetment of any of the foregoing offences;

(*k.*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

(*a.*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;

(*b.*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c.*) Abetment of any of the foregoing offences;

(*d.*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant-cases applicable.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter, in such form as the Local Government may direct the following particulars :— Act X. of 1882.

Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage, and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*), or clause (*f*) of section 260, the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceeding terminated.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Record in appealable cases.

Such judgment shall be the only record in cases coming within this section.

265. Records made under section 263, and judgments recorded under section 264, shall be written by the presiding officer, either in English, or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of record and judgment.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorized to employ clerk.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.*

A.—Preliminary.

266. In this chapter, except in "sections 276 and 307,"† the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court

"High Court" defined.

* As to Courts of Session in Upper Burma, see Reg. VII. of 1886, sch., s. 3; but as to European British subjects, see s. 22, *ib.*

† The words and figures quoted have been substituted by Act X. of 1886, s. 8, for the word and figures "section 307," which were originally enacted.

Act X. of 1882. of the Punjab, "the Court of the Recorder of Rangoon,"* and such other Courts as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.†

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case:

Refusal to plead or claim to be tried.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Trial by same jury or assessors of several offenders in succession.

273. In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge, or any portion thereof, is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

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* In s. 266 the seven words quoted have been added by the Lower Burma Courts' Act (XI. of 1889), s. 97 and sch.

† This paragraph has been substituted by Act X. of 1886, s. 9, for the one originally enacted.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be. Act X. of 1882.

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Jury for trial of persons not Europeans or Americans before Court of Session.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors to be chosen by lot.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may, from time to time, by rule direct:

Proviso.

Provided that—

Existing practice maintained.

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed:

Persons not summoned when eligible.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Trials before special jurors.

thirdly, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury-list hereinafter prescribed.

Names of jurors to be called.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown, and eight on behalf of the person or all the persons charged.

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

Act X. of 1882.

(*c*) his having, by habit or religious vows, relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, *provided that no objection to such juror or other person is taken under section 278 and allowed.*

Foreman of jury.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Procedure when juror ceases to attend, &c.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Assessors how chosen.

284. When a trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Act X. of 1882.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

If all the assessors are prevented from attending or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to close of Cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

The prosecutor shall then examine his witnesses.

Examination of witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Examination of accused before Magistrate to be evidence.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

289. When the examination of the witnesses for the prosecution, and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and, after their cross-examination and re-examination (if any), may sum up his case.

Defence.

Act X of 1882.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

View by jury or assessors.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and subject to such rules, the presiding Judge may order whether, and in what manner, the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties.

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which, under such view, ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which, according to law, are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Act X. of 1882.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict to be given on each charge.

Judge may question jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

Such questions, and the answers to them, shall be recorded.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. When, in a case tried before a High Court, the jury are unanimous in their opinion, or when as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When, in any such case, the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. When, in a case tried before the Court of Session, the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. If, in any such case, the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

Act X. of 1882.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in cases tried with Assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinions of assessors.

The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

Judgment.

If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence, committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows:—

Procedure in case of previous conviction.

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

Notwithstanding anything in this section, evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.*

J.—List of Jurors for High Court, and summoning Jurors for that Court.

311. [*Repealed by Act XII. of 1891.*]

312. The names of not more than "four"† hundred persons shall, at any one time, be entered in the special jurors' list.

Number of special jurors.

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* This clause has been added by Act III. of 1891, s. 9.

† The word "four" has been substituted for the word "two" as originally enacted. —See Act V. of 1887, s. 2.

Act X. of 1882.

Lists of common and special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor-General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists preliminary and revised.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months, unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the

Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid. Act X. of 1882.

All officers so summoned shall be liable to serve on such juries, notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

318. Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

Liability to serve as jurors or assessors.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

Exemptions.

(*a*) Officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the Preventive Service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641;

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified, in the judgment of the Sessions Judge and Collector or other officer as aforesaid,

List of jurors and assessors.

Act X. of 1882.

to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode, and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

325. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

District Magistrate to summon jurors and assessors.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may, from time to time, fix for holding the sessions, send a letter to the District Magistrate, requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X. of 1882.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the periods specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.

Power to summon another set of jurors or assessors.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and contents of summons.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

330. The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

332. Any person summoned to attend as a juror or as an assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal, unless the presiding Judge otherwise directs.

Power of Advocate-General to stay prosecution.

Act X. of 1882.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days, and at such convenient intervals, as the Chief Justice of such Court, from time to time, appoints.

Place of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Place of trial of European British subjects.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337.* In the case of any offence "triable exclusively by the Court of Session or High Court,"† the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial "by the Court of Session or High Court, as the case may be."†

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* As to tender of pardon to accomplice in Upper Burma, and trial of the case by the Magistrate, see Reg. VII. of 1886, sch., s. 11; but as to European British subjects, see s. 22, *ib.*

† In places where the Punjab Frontier Crimes Regulation, 1887, is in force, these quoted words in s. 337 are to be omitted.—See Reg. IV. of 1887, s. 9.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender, and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate. Act X. of 1882.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339.* Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him, when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

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* As to State offences and false evidence by person to whom pardon has been tendered in Upper Burma, see Reg. VII. of 1886, sch., s. 10; but as to European British subjects, see s. 22, *ib.*

Act X. of 1882.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same, on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Act X. of 1882.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the table next following, may be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

Act X. of 1882.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338, of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law, or property.

348. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be, or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment

different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate. Act X. of 1882.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has, and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses, and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance, and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII. or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

Act X. of 1882.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.*

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVII., XX., XXI., XXII., and XXIII., shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Manner of recording evidence outside Presidency-towns.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases, and in trials of certain offences by first and second-class Magistrates.

355. In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the

* As to recording of evidence in inquiries and trials before a Magistrate or Court of Session in Upper Burma, see Reg. VII. of 1886, sch., s. 12; but as to European British subjects, see s. 22, *ib.*

evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. Act X of 1882.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 355.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Mode of recording evidence under section 356 or section 357.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

361. Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

Interpretation of evidence to accused or his pleader.

If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in

Record of evidence in Presidency Magistrates' Courts.

Act X. of 1882.

writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35, on the same occasion, shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Panjáb may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time, of which due notice shall be given to the parties or their pleaders; and the accused shall, if

in custody, be brought up, or, if not in custody, shall be required to attend, to hear judgment delivered except where his personal attendance during the trial has been dispensed with, and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader. Act X. of 1882.

Language of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

Contents of judgment.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

369. No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in section 395, or to correct a clerical error.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

Act X. of 1882.

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained, and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made, or additional evidence to be taken.

375. If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or Act X of 1882.

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation of new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges, and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the Lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the Lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Session otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Session, the result of such inquiry and the evidence shall be certified to such Court.

Act X. of 1882.

CHAPTER XXVIII.

OF EXECUTION.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Execution of sentences of transportation or imprisonment in other cases.

383.* Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant.

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

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* As to execution of sentences of imprisonment for six months or less in Upper Burma, see Reg. VII. of 1886, sch., s. 13; but as to European British subjects, see s. 22, *ib.*

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct. Act X, of 1882.

Execution of sentence of whipping only.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

In no case shall such punishment exceed thirty stripes.

Limit of number of stripes.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

Not to be executed by instalments.
Exemptions.

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or, in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

Act X. of 1882.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts.

396. When sentence is passed under this Code on an escaped convict such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced;

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately or at the expiration of the imprisonment to which he has been previously sentenced.

Provisions supplemental to sections 35, 396, and 397.

398.* (*1*) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(*2*) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is, after its execution, to undergo a further substantive sentence, or further substantive sentences of imprisonment, transportation, or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

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* S. 398 has been substituted by Act X, of 1886, s. 10, for the one originally enacted.

399 * When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein. Act X. of 1882.

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

401. When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced.

Power to suspend or remit sentences.

Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.†

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.†

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

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* S. 399 (corresponding to s. 318 of Act X. of 1872) is repealed in provinces in which the Reformatory Schools Act, 1876, is declared in force.—See Act V. of 1876, ss. 1 and 2, and s. 3, *supra*.

† These two paragraphs have been substituted by Act X. of 1886, s. 11, for the one originally enacted.

Act X. of 1882.

Power to commute punishment.

402. The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph 1.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant, and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder, and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for causing grievous hurt, and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of this section.

(*f.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*.) A, B, and C, are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C, may afterwards be charged with, and tried for, dacoity on the same facts. Act X, of 1882.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.

OF APPEALS.

404. No appeal shall lie from any judgment or order of a Criminal Court, except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him, and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Transfer of appeals to first-class Magistrate.

408.* Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

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* As to appeal from sentence of a District Magistrate in Upper Burma and limitation therefor, see Reg. VII. of 1886, sch., s. 14; but as to European British subjects, see s. 22, *ib.*

In places where the Punjab Frontier Crimes Regulation, 1887, is in force, certain appeals lie to the Chief Court, and not to the Court of Session.—See Reg. IV. of 1887, s. 7 (*a*).

Act X. of 1882.

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty, and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413.* Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

No appeal from certain summary convictions.

414.* Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily, in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII. on European British subjects.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

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* For restrictions on appeals in Upper Burma, see Reg. VII. of 1886, sch., s. 15; but as to European British subjects, see s. 22, *ib.*

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

EXPLANATION.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed, unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423.* The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant, or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty, and pass sentence on him according to law;

(*b*) in an appeal from a conviction (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and

* As to power of enhancing punishment on appeal in Upper Burma, see Reg. VII. of 1886, sch., s. 16; but as to European British subjects, see s. 22, *ib.*

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with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Judgment of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI. as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to Lower Court.

425. Whenever a case is decided on appeal by the High Court under this chapter it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal.

Release of appellant on bail.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence, or direct it to be taken.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors. Act X. of 1882.

The taking of evidence under this section shall, for the purposes of Chapter XXV, be deemed to be an inquiry.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer, for the decision of a Court consisting of two or more Judges of such Court, any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail;

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to

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alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Power to call for records of inferior Courts.

435. The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144, and proceedings under section 176, are not proceedings within the meaning of this section.

Power to order commitment.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Provided as follows:—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made;

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Power to order inquiry.

437. On examining any record under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

Report to High Court.

438.* The Court of Session or District Magistrate may, if it or he thinks fit, on examining, under section 435 or otherwise, the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

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* For restrictions on appeals in Upper Burma, see Reg. VII. of 1886, sch., s. 15; but as to European British subjects, see s. 22 *ib.*

High Court's powers of revision.

433. In the case of any proceeding, the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused, unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph 2.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order, and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

High Court's order to be certified to Lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

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PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrates who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a "District Magistrate or"* Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years, and to be specially empowered.

444. No Judge presiding in a Court of Session "except the Sessions Judge."† shall exercise jurisdiction over an European British subject, unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Cognizance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a "District Magistrate or"‡ Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both; "and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both."§

When commitment is to be to Court of Session and when to High Court.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

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* The words quoted have been inserted by Act III. of 1884, s. 3.
† The words quoted have been inserted by Act III. of 1884, s. 4.
‡ The words quoted have been inserted by Act III. of 1884, s. 5.
§ The words quoted have been added by Act III. of 1884, s. 5.

448. Where any person committed to the High Court under section 447 is charged with several offences, of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

450. [*Repealed by Act III. of 1884, s. 6.*]

451.* (*1*) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury, of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

Jury or assessors before High Court or Court of Session.

(*2*) When any such trial before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (*1*), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.

451A. (*1*) In trials of European British subjects before a District Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of European British subject to claim jury before District Magistrate.

(*2*) If a claim is made under sub-section (*1*) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(*3*) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(*4*) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

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* This section has been substituted by Act III. of 1884, s. 7, for the one originally enacted.

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(5) The provisions of sections 211, 216, 217, 219, and 220, shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.*

Transfer to another Court in certain cases.

451B. (1) If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf, and approved by the Local Government, or by special order, direct.

(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall, with all convenient speed, try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A.*

Trial of European British subject and native jointly accused.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

When native may claim separate trial.

Provided that, if the European British subject requires, under section 451, to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires, that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

Procedure on claim of person to be dealt with as European British subject.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals

* Sections 451A and 451B have been inserted by Act III. of 1884, s. 8.

from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further enquiry (if any) as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Failure to plead status a waiver.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried, or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Trial under this chapter of person not an European British subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be), shall not, by reason of such dealing, be invalid.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Territories throughout which High Court may issue such orders.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

459 Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be

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deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate "or any Judge presiding in a Court of Session"* not being a Justice of the Peace.†

Jury for trial of Europeans or Americans.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

Jury when European or American charged jointly with one of another race.

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and, in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Summoning and empanelling jurors under section 451, 451A, 451B, or 460.

462. When a trial is to be held before the Court of Session, in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, "or before the Court of a District Magistrate or Sessions Judge proceeding under section 451A or 451B,"‡ the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Conduct of criminal proceedings against European British subjects, &c.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

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* The words quoted have been inserted by Act III. of 1884, s. 9.

† Here 16 words, namely, "or in any Magistrate or Sessions Judge outside the Presidency-towns, not being an European British subject," have been repealed by Act III. of 1884, s. 9.

‡ The words quoted have been inserted by Act III. of 1884, s. 10.

CHAPTER XXXIV.

Act X. of 1882.

LUNATICS.

Procedure in case of accused being lunatic.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind, and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance, when required, before the Magistrate or Court, or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum, or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Resumption of inquiry or trial.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

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When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector-General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons if such person is confined *in a jail*, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend. Act X. of 1882.

Delivery of lunatic to care of relative.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

475A.* The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail, or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail, or other place of safe custody in British India.

Power of Governor-General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

475B.* The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473, or section 474.

Power of Local Government to relieve Inspector-General of certain functions.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Procedure in cases mentioned in section 195.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Power of Court of Session as to such offences committed before itself.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

* These two sections have been inserted by Act X. of 1886, s. 12.

Act X. of 1882.

Power of Civil and Revenue Courts to complete investigation, and commit to High Court or Court of Session.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil Revenue Court in such cases.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228, of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 480.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided. Act X. of 1882.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has, under section 480, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487.* Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence

* As to power of Judges and Magistrates in Upper Burma to try offences referred to in s. 195 when committed before themselves, &c., see Reg. VII. of 1886, sch., s. 17.

Act X. of 1882.

is committed before himself, or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person, having sufficient means, neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section, notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that, without sufficient reason, she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian (if any), or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non payment of the allowance due. Act X. of 1882.

Enforcement of order of maintenance.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending, or to be inquired into, in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III. of 1818, Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the Acts of the Governor-General in Council No. XXXIV. of 1850 or No. III. of 1858.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers, to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub divisional Magistrate, may, in the absence of the Public Prosecutor, or where no

Act X. of 1882. Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Public Prosecutor may plead in all Courts in cases under his charge.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial, or appeal; and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Pleaders, privately instructed, to be under his direction.

Effect of withdrawal from prosecution.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when, under this Code, no charge is required, he shall be acquitted.

Permission to conduct prosecution.

495. "Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council;" * but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted. †

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

* For the first sentence of s. 495, as originally enacted, the words quoted have been substituted by Act X. of 1886, s. 13 (*1*).

† This para. has been added by Act X. of 1886, s. 13 (*2*); but as to conduct of prosecutions by police-officers in Upper Burmah, notwithstanding anything in s. 495, see Reg. VII. of 1886, sch., s. 18.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. Act X. of 1882.

When bail may be taken in case of non-bailable offence.

If it appears to such officer or Court at any stage of the investigation, inquiry, or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

Discharge from custody.

Nothing in this section, section 496, or section 497, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Discharge of sureties.

Act X. of 1882.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

When attendance of witness may be dispensed with.

503. Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court, that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty, in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in trials of warrant cases under this Code.

Commission in case of witness being within Presidency-town.

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witnesses.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader or if not in custody, in person, and may examine, cross-examine, and re examine, (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial, or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition, shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Adjournment of inquiry or trial

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding, may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial, or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of any* Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial, or other proceeding under this Code.

Previous conviction or acquittal how proved.

511. In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

* The word "any" has been substituted by Act X. of 1886, s. 14, for the word "the."

Act X. of 1882.

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate "or Chief Presidency Magistrate" * within the local limits of whose jurisdiction such property is found.

If such penalty be not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

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* The words quoted have been inserted by Act X. of 1886, s. 4.

The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only. Act X. of 1882.

Appeal from, and revision of, orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516 The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall, in such cases, deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has, on his arrest, been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen pro-

Act X. of 1882.

perty to the person entitled to the possession thereof, or if that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under sections 517, 518, or 519.

520. Any Court of appeal, confirmation, reference, or revision, may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter, or annul such order.

Destruction of libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501, or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court, or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation in respect of which the conviction was had, to be destroyed.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation, specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where no claimant appears within six months.

524. If no person within such period, establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525 If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into, or trial of, the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, "or

(*e*) that such an order is expedient for the ends of justice,"*

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(3) that any particular criminal case or appeal be transferred to and tried before itself; "or

(4) that an accused person be committed for trial to itself or to a Court of Session."*

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the

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* The words quoted have been inserted by Act III. of 1884, s. 11.

Act X. of 1882.

application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

Adjournment on application under section 526.

526A.* If in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant, or the accused, notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made, and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

Power of Governor-General in Council to transfer criminal cases and appeals.

527. The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Sub-divisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

A Magistrate making an order under this section shall record in writing his reason for making the same †

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely:—

(*a*) to issue a search-warrant under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

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* S. 526A has been inserted by Act III. of 1884, s. 12.

As to adjournment on application for transfer of cases in Upper Burma, see Reg. VII. of 1886, sch., s. 19.

† This clause has been inserted by Act III. of 1884, s. 13.

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*); Act X. of 1882.

(*f*) to transfer a case under section 192

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528,

erroneously, in good faith, does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*) makes an order under section 133 as to a local nuisance;

(*h*) prohibits under section 143 the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII.;

(*k*) takes cognizance, under section 191, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises, under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily; or

(*r*) decides an appeal,

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence, or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial, or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division, or other local area, unless it appears that such error occasioned a failure of justice,

Act X. of 1882.

When irregular commitments may be validated.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Non-compliance with provisions of section 164 or 364.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Omission to ask question prescribed by section 454, clause 2.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537.* Subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII. or on appeal or revision on account—

of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceedings before or during trial, or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

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* In Upper Burma orders are not reversible on appeal or revision on technical grounds alone.—See Reg. VII. of 1886, sch., s. 20; but as to European British subjects, see s. 22, *ib*

of the omission to revise any list of jurors or assessors in accordance with section 324, or Act X. of 1882.

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want, or misdirection, has occasioned a failure of justice.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress, or other proceedings relating thereto.

Distress not illegal, nor distrainer a trespasser, for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

540. Any Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine, any such person, if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

541A.* (*1*) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(*2*) When a person is removed to a criminal jail under sub-section (*1*), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

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* S. 541A has been inserted by Act X. of 1886, s. 15.

Act X. of 1882.

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail, requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesses.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor-General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine.

545. Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or

other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost. Act X. of 1882.

Delivery to military authorities of persons liable to be tried by Court-martial.

549. The Governor-General in Council may make rules consistent with this Code and the Army Act,* or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate, and charged with an offence for which he is liable, under the Army Act,* section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall, in proper cases, deliver him together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Powers of superior officers of police.

550. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Power to compel restoration of abducted females.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Compensation to persons groundlessly given in charge in Presidency-town.

552. Whenever any person causes a police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days as the Magistrate directs unless such sum is sooner paid.

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* Here the figures "1881," repealed by Act XII. of 1891, have been omitted.

Act X. of 1882.

553. With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

Every High Court not established by Royal Charter, may, from time to time, and with the previous sanction of the Local Government,

Power of other High Courts to make rules for other purposes.

(*a*) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*)* make rules for regulating its own practice and proceedings, and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

EXPLANATION.—A Judge or Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Power to decide language of Courts.

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* In Upper Burma rules under s. 553, cl. *c*, may regulate fees for processes, and copies and inspection of records.—See Reg. VII. of 1886, sch., s. 21.

Powers of Governor-General in Council and Local Government exercisable from time to time.

557. All powers conferred by this Code on the Governor-General in Council or on the Local Government may be exercised, from time to time, as occasion requires. Act X. of 1882.

558. [*Repealed by Act XII. of 1891.*]

Officers concerned in sales not to purchase or bid for property.

559.* A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Frivolous or vexatious accusations.

560.† (*1*) If, in any case, instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is tried discharges or acquits the accused, and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:

Provided that, before making any such direction, the Magistrate shall—

(*a*) record and consider any objection which the complainant or informant may urge against the making of the direction, and,

(*b*) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(*2*) Compensation of which a Magistrate has ordered payment under sub-section (*1*) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding 30 days, as the Magistrate directs.

(*3*) A complainant or informant who has been ordered under sub-section (*1*) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(*4*) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (*3*), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(*5*) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.

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* S. 559 is a new section, added by Act X. of 1886, s. 16.
† S. 560 is a new section, added by Act IV. of 1891.

Act X. of 1882.

Special provisions with respect to offence of rape by a husband.

561.* (*1*) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence:

(*2*) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer with respect to such an offence as is referred to in sub-section (*1*) of this section, no police-officer of a rank below that of Police Inspector shall be employed either to make, or to take part in, the investigation.

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* S. 561 is a new section, added by Act X. of 1891, s. 2.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a.*)—*Statute.*

Year, Reign, and Chapter.	TITLE.	Extent of repeal.
13 Geo. III., chapter 63.	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(*b.*)—*Acts of the Governor-General in Council.*

Number and year.	SUBJECT.	Extent of repeal.
XXIII. of 1840 ...	Execution of Process ...	So much as has not been repealed.
XLV. of 1860 ...	Penal Code	The illustrations to section 214.
V. of 1861 ...	Police Act	Section 6 and the last nine words of section 24.
		Section 35, down to and including the words "Provided that."
XVIII. of 1862 ...	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI. of 1864 ...	Whipping	Section 7.
II. of 1869 ...	Justices of the Peace ...	So much as has not been repealed.
XXII. of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	Ditto.
IV. of 1872 ...	Punjab Laws	So far as it relates to Bengal Regulation XX. of 1825.
X. of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI. of 1874 ...	Amending the Code of Criminal Procedure.	The whole.

Act X. of 1882.

SCHEDULE I.—(*continued.*)

ENACTMENTS REPEALED—(*continued.*)

(*b.*)—*Acts of the Governor-General in Council*—(continued.)

Number and year.	SUBJECT.	Extent of repeal.
XV. of 1874 ...	Laws Local Extent ...	So far as it relates to Bengal Regulation XX. of 1825.
X. of 1875 ...	High Courts' Criminal Procedure.	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX. of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX. of 1825.
XVIII. of 1876 ...	Oudh Laws	Ditto.
IV. of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57.
XXI. of 1879 ...	Extradition	Chapter III.
X. of 1881 ...	Coroners	Sections 8 and 9.

(*c.*)—*Regulations.*

Number and year.	SUBJECT.	Extent of repeal.
Bengal Regulation XX. of 1825.	Jurisdiction of Courts-martial	So much as has not been repealed.
III. of 1872 ...	Sonthal Pergunnahs Settlement	So far as it relates to Act X. of 1872.
IX. of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II. of 1869, X. of 1872, and XI. of 1874.
III. of 1877 ...	Ajmere Laws	So far as it relates to Bengal Regulation XX. of 1825.

(*d.*)—*Act of the Governor of Fort St. George in Council.*

Number and year.	SUBJECT.	Extent of repeal.
VIII. of 1867 ...	Police...	Section 9.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.

114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	Not bailable	Ditto	...	Imprisonment of either description for 7 years and fine.		Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	Ditto	...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.		Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years or fine.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	...	Ditto	...	Not bailable	Ditto	...	Imprisonment of either description for 7 years and fine.		Ditto.
	If the offence be not committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.

CHAPTER V.—ABETMENT—(*concluded.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
124A	Exciting or attempting to excite disaffection,	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine or fine.	Court of Session.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
130	Aiding escape of, rescuing, or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(*continued*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
135	Abetment of the desertion of an officer, soldier, or sailor.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence.	The Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.

155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY, OR RELATING TO, PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER IX.—OFFENCES BY, OR RELATING TO, PUBLIC SERVANTS—(*continued*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person, or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.; or, if not committed in a Court, a Presidency Magistrate, or Magistrate of the first or second class.
	If the document is required to be produced in, or delivered to, a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV.; or, if not committed in a Court, a Presidency Magistrate, or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.

181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*concluded*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance, or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same as for the offence.	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Shall not arrest without warrant.	Warrant	Bailable ...	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

	If punishable with transportation for life or imprisonment for ten years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with less than ten years' imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	...	Summons...		Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto	...	Warrant ...		Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.

210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offences charged be punishable with imprisonment for 7 years.*	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for one year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

* This item has been added by Act X. of 1886, s. 17.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
216A	Harbouring robbers or dacoits*	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

* Item 216A has been inserted by Act III. of 1894, s. 4.

218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision, which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life or imprisonment of either description for 14 years, with or without fine.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If under sentence of imprisonment for less than 10 years, or lawfully committed to custody.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If charged with a capital offence	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A*	Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for— (*a*) in case of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	(*b*) in case of negligent omission or sufferance.	Ditto ...	Summons...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

* Items 225A and 225B have been substituted by Act X. of 1886, s. 18, for the one originally enacted, that is, 225A.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*.)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
225B*	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life and fine, and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

* Items 225A and 225B have been substituted by Act X. of 1886, s. 18, for the one originally enacted, that is, 225A.

228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If Queen's coin	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.

237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin, with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin, with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
255	Counterfeiting a Government stamp.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.

260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES—(*concluded.*)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
265	Fraudulent use of false weight or measure.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.		Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug of medical preparation known to have been adulterated.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	President cy Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons... ...	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto	Ditto	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—(*concluded*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
293	Sale, &c., of obscene books, &c.	Ditto	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294A	Keeping a lottery-office ...	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Compoundable.	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued.*)

Of Offences affecting Life—(concluded.)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.

306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life and fine.	Court of Session.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued.*)

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births—concld.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
313	Causing miscarriage without woman's consent.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.

318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

Of Hurt.

323	Voluntarily causing hurt ...	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).
Of Hurt—(concluded).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant..	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending..	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Not compoundable..	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c,	Ditto ...	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued.*)

Of Wrongful Restraint and Wrongful Confinement.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
341	Wrongfully restraining any person.	May arrest without warrant.	Summons...	Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued.*)

Of Criminal Force and Assault—(concluded.)

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons...	Ditto ...	Compoundable.	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Ditto	Ditto.
371	Habitual dealing in slaves ...	May arrest without warrant,	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*concluded*).

Of Kidnapping, Abduction, Slavery, and Forced Labour—(concluded).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.						
376*	Rape—						
	If the sexual intercourse was by a man with his own wife.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
	In any other case	May arrest without warrant.	Warrant ...	Not bailable.	Ditto ...	Ditto	Ditto.

* The entries in cols. 2 to 8, both inclusive, referring to s. 376, have been substituted by Act X. of 1891.

377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent, or vessel	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

Of Extortion.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
395	Dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
396	Murder in dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

Of Robbery and Dacoity—(concluded).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Rigorous imprisonment for not less than 7 years.	Court of Session.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
405	If by clerk or person employed by deceased.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Breach of Trust—(concluded).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	Of the Receiving of Stolen Property.						
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.

413	Habitually dealing in stolen property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
419	Cheating by personation ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating, and thereby dishonestly inducing delivery of property, or the making, alteration, or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

Of Fraudulent Deeds and Dispositions of Properyt.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

426	Mischief	Shall not arrest without warrant. ...	Summons...	Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(continued.)*

Of Mischief—(continued).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or, imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Trespass—(continued).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

453	Lurking house-trespass or house-breaking.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 14 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*concluded*).

Of Criminal Trespass—(concluded).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*continued*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Punishment for forgery...	Court of Session.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.

Of Trade and Property-marks.

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*concluded*).

Of Trade and Property-marks—(continued).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE—(*continued*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month; or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.

494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXI.—DEFAMATION—(*continued*).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.

506	Criminal intimidation	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	.....	

According to the provisions of section 29 of this Code.

If punishable with imprisonment for three years and upwards, but less than seven.	Ditto	Ditto	Ditto	Ditto except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	Ditto	.....
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons	Bailable	Ditto	Ditto	.....
If punishable with fine only.	Ditto	Ditto	Ditto	Ditto	Ditto	.....

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1A) Power to arrest, or direct the arrest, and to commit to custody, a person committing an offence in his presence, section 64.*
(1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84, and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant, and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police-investigation, section 164.
(9) Power to authorize detention of a person during a police-investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders, &c., in possession-cases, sections 145, 146, and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(2A) Power to require security for good behaviour, section 110.†
(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 144.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

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* Inserted by Act XII. of 1891.

† Inserted by Act X. of 1886, s. 19.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.

(2) Power to issue search-warrants for documents in custody of Postal or Telegraph Authorities, section 96.

(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.

(4) Power to cancel bond for keeping the peace, section 125.

(5) Power to try summarily, section 260.

(6) Power to quash convictions in certain cases, section 350.

(7) Power to hear appeals from orders requiring security for good behaviour, section 406.

(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.

(9) Power to call for records, section 435.

(10) Power to revise orders passed under section 514, section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to require security for good behaviour, section 110: (2) Power to make orders as to local nuisances, section 133: (3) Power to make orders prohibiting repetitions of nuisances, section 143: (4) Power to make orders under section 144: (5) Power to hold inquests, section 174: (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186: (7) Power to take cognizance of offences upon complaint, section 191: (8) Power to take cognizance of offences upon police-reports, section 191: (9) Power to take cognizance of offences upon information, section 191: (10) Power to try summarily, section 260: (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407: (12) Power to sell property alleged or suspected to have been stolen, &c., section 524.

Act X. of 1882.

SCHEDULE IV.—(*continued*).

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED—(*continued*).

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to transfer cases, section 192:
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to pass sentences of whipping, section 32: (2) Power to make orders prohibiting repetitions of nuisances, section 143: (3) Power to make orders under section 144: (4) Power to hold inquests, section 174: (5) Power to take cognizance of offences upon complaint, section 191: (6) Power to take cognizance of offences upon police-reports, section 191: (7) Power to take cognizance of offences upon information, section 191: (8) Power to commit for trial, section 206:
	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 142: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police-reports, section 191:
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police-reports, section 191: (6) Power to commit for trial, section 206:
	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police-reports, section 191:
POWERS WITH WHICH A SUBDIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT	Power to call for records, section 435.

SCHEDULE V.

Act X of 1882.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To of

WHEREAS your attendance is necessary to answer to a charge of [*state shortly the offence charged*], you are hereby required to appear in person [*or* by pleader, *as the case may be*], before the [*Magistrate*] of , on the day of . Herein fail not.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

II.—WARRANT OF ARREST.

(See section 75.)

To [*name and designation of the person or persons who is or are to execute the warrant*].

WHEREAS of stands charged with the offence of [*state the offence*], you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

(See section 76.)

This warrant may be endorsed as follows:—

If the said shall give bail himself in the sum of , with one surety in the sum of [*or* two sureties each in the sum of], to attend before me on the day of , and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of 18 . [*Signature.*]

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I, [*name*], of , being brought before the District Magistrate of [*or as the case may be*] under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

I do hereby declare myself surety for the above-named of , that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 87.*)

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or* is suspected to have committed] the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [*name*] cannot be found; and whereas it has been shown to my satisfaction that the said [*name*] has absconded [*or* is concealing himself to avoid the service of the said warrant];

Proclamation is hereby made that the said of is required to appear at [*place*] before this Court [*or* before me] to answer the said complaint within days from this date.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 87.*)

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or* is suspected to have committed] the offence of [*mention the offence concisely*], and a warrant has been issued to compel the attendance of [*name, description, and address of the witness*] before this Court to be examined, touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said [*name of witness*] cannot be served, and it has been shown to my satisfaction that he has absconded [*or* is concealing himself to avoid the service of the said warrant];

Proclamation is hereby made that the said [*name*] is required to appear at [*place*] before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section 88.*)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of [*name, description, and address*] to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded [*or* is concealing himself to avoid the service of the said warrant]; and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of , and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section 88.*)

To [*name and designation of the person or persons who is or are to execute the warrant*].

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or* is suspected to have committed] the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [*name*] cannot be found; and whereas it has been shown to my satisfaction that the said [*name*] has absconded [*or* is concealing himself to avoid the service of the said warrant]; and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village [*or* town] of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section 88.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or* is suspected to have committed] the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [*name*] cannot be found; and whereas it has been shown to my satisfaction that the said [*name*] has absconded [*or* is concealing himself to avoid the service of the said warrant], and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village [*or* town] of in the District of ;

You are hereby authorized and requested to cause the said land to be attached and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section 90.*)

To [*name and designation of the police-officer or other person or persons who is or are to execute the warrant*].

WHEREAS complaint has been made before me that of has [*or* is suspected to have] committed the offence of [*mention the offence concisely*], and it appears likely that [*name and description of witness*] can give evidence concerning the said com-

plaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said [*name*], and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 96.*)

To [*name and designation of the police-officer or other person or persons who is or are to execute the warrant*].

WHEREAS information has been laid [*or* complaint has been made] before me of the commission [*or* suspected commission] of the offence of [*mention the offence concisely*], and it has been made to appear to me that the production of [*specify the thing clearly*] is essential to the inquiry now being made [*or* about to be made] into the said offence [*or* suspected offence];

This is to authorize and require you to search for the said [*the thing specified*] in the [*describe the house or place or part thereof to which the search is to be confined*], and, if found, to produce the same forthwith before this Court; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section 98.*)

To [*name and designation of a police-officer above the rank of a Constable*].

WHEREAS information has been laid before me, and, on due inquiry thereupon had, I have been led to believe that the [*describe the house or other place*] is used as a place for the deposit [*or* sale] of stolen property [*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*];

This is to authorize and require you to enter the said house [*or other place*] with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house [*or other place, or, if the search is to be confined to a part, specify the part clearly*], and to seize and take possession of any property [*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*]—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin (*as the case may be*)], and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

X.—BOND TO KEEP THE PEACE.

(*See section 106.*)

WHEREAS I, [*name*], inhabitant of [*place*], have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

XI.—BOND FOR GOOD BEHAVIOUR.

(*See sections 109 and 110.*)

WHEREAS I, [*name*], inhabitant of [*place*], have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of [*state the period*], I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

[*Where a bond with sureties is to be executed, add*]—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 114.*)

To of

WHEREAS it has been made to appear to me by credible information that [*state the substance of the information*], and that you are likely to commit a breach of the peace [*or* by which act a breach of the peace will probably be occasioned], you are hereby required to attend in person [*or* by a duly-authorized agent] at the office of the Magistrate of on the day of 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for Rupees [*when sureties are required, add* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of Rupees (each, *if more than one*)] that you will keep the peace for the term of .

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

Act X. of 1882.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section 123.*)

To the Superintendent [*or* Keeper] of the Jail at .

WHEREAS [*name and address*] appeared before me in person [*or* by his authorized agent] on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for Rupees , with one surety [*or* a bond with two sureties each in Rupees], that he the said [*name*] would keep the peace for the period of months; and whereas an order was then made requiring the said [*name*] to enter into and find such security [*state the security ordered when it differs from that mentioned in the summons*], and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent [*or* Keeper] to receive the said [*name*] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [*term of imprisonment*], unless he shall in the meantime comply with the said order by himself and his surety [*or* sureties] entering into the said bond, in which case the same shall be received, and the said [*name*] released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section 123.*)

To the Superintendent [*or* Keeper] of the Jail at .

WHEREAS it has been made to appear to me that [*name and description*] has been and is lurking within the District of having no ostensible means of subsistence [*or* and that he is unable to give any satisfactory account of himself];

or

WHEREAS evidence of the general character of [*name and description*] has been adduced before me, and recorded, from which it appears that he is an habitual robber [*or* house-breaker, &c., *as the case may be*];

And whereas an order has been recorded, stating the same, and requiring the said [*name*] to furnish security for his good behaviour for the term of [*state the period*] by entering into a bond with one surety [*or* two or more sureties, *as the case may be*], himself for Rupees , and the said surety [*or* each of the said sureties] for Rupees , and the said [*name*] has failed to comply with the said order, and for such default has been adjudged imprisonment for [*state the term*] unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent [*or* Keeper] to receive the said [*name*] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [*term of imprisonment*], unless he shall in the meantime comply with the said order by himself and his surety [*or* sureties] entering into the said bond, in which case the same shall be received, and the said [*name*] released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections 123 and 124.*)

To the Superintendent [*or* Keeper] of the Jail at [*or other officer in whose custody the person is*].

WHEREAS [*name and description of prisoner*] was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said [*name*] from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section 133.*)

To [*name, description, and address*].

WHEREAS it has been made to appear to me that you have caused an obstruction [*or* nuisance] to persons using the public roadway [*or other public place*], which, &c. [*describe the road or public place*], by, &c. [*state what it is that causes the obstruction or nuisance*], and that such obstruction [*or* nuisance] still exists;

or

WHEREAS it has been made to appear to me that you are carrying on, as owner or manager, the trade or occupation of [*state the particular trade or occupation, and the place where it is carried on*], and that the same is injurious to the public health [*or* comfort] by reason [*state briefly in what manner the injurious effects are caused*], and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner of [*or* are in possession of, *or* have the control over] a certain tank [*or* well, *or* excavation] adjacent to the public way [*describe the thoroughfare*], and that the safety of the public is endangered by reason of the said tank [*or* well, *or* excavation] being without a fence [*or* insecurely fenced];

or

WHEREAS, &c., &c., [*as the case may be*];

I do hereby direct and require you within [*state the time allowed*] to [*state what is required to be done to abate the nuisance*], or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced; or

I do hereby direct and require you, within [*state the time allowed*], to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you, within [*state the time allowed*], to put up a sufficient fence [*state the kind of fence and the part to be fenced*], or to appear, &c.;

or

I do hereby direct and require you, &c., &c., [*as the case may be*].

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

Act X. of 1882.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 138.*)

WHEREAS on the day of 18 , an order was issued to [*name*] requiring him [*state the effect of the order*], and whereas the said [*name*] has applied to me by a petition, bearing date the day of , for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint [*the names, &c., of the five or more jurors*] to be the Jury to try and decide the said questions, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section 140.*)

To [*name, description, and address*].

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order isssued on the day of requiring you [*state substantially the requisition in the order*] is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within [*state the time allowed*] on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section 142.*)

To [*name, description, and address*].

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of 18 is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to [*state plainly what is required to be done as a temporary safeguard*], pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &C., OF A NUISANCE.

(*See section 143.*)

To [*name, description, and address*].

WHEREAS it has been made to appear to me that, &c. [*state the proper recital, guided by* Form No. XVI. or Form No. XXI., *as the case may be*];

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing, or causing or permitting to be placed, &c. [*as the case may be*].

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section 144.*)

To [*name, description, and address*].

WHEREAS it has been made to appear to me that you are in possession [*or* have the management] of [*describe clearly the property*], and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons [*mention the class of persons*] are about to meet and proceed in a religious procession along the public street, &c. [*as the case may be*], and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. [*as the case may be*];

I do hereby order you not to place, or permit to be placed, any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession [*or as the case recited may require*].

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section 145.*)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between [*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*] concerning certain [*state concisely the subject of dispute*] situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said [*the subject of dispute*], and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said [*name or names or description*] is true.

I do decide and declare that he is [*or* they are] in possession of the said [*the subject of dispute*], and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his [*or* their] possession in the meantime.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section 146.*)

To the Police-officer in charge of the Police-station at [*or* To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between [*describe the parties concerned by name and residence, or re-*

sidence only if the dispute be between bodies of villagers] concerning certain [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said [*the subject of dispute*] and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said [*the subject of dispute*] [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said [*the subject of dispute*] by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(*See section 147.*)

A DISPUTE having arisen concerning the right of use of [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, the possession of which land [*or* water] is claimed exclusively by [*describe the person or persons*], and it appearing to me, on due inquiry into the same, that the said land [*or* water] has been open to the enjoyment of such use by the public [*or if by an individual or a class of persons, describe him or them*], and [*if the use can be enjoyed throughout the year*] that the said use has been enjoyed within three months of the institution of the said inquiry [*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed"];

I do order that the said [*the claimant or claimants of possession*], or any one in their interest, shall not take [*or* retain] possession of the said land [*or* water] to the exclusion of the enjoyment of the right of use aforesaid, until he [*or* they] shall obtain the decree or order of a competent Court adjudging him [*or* them] to be entitled to exclusive possession.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section 169.*)

I, [*name*], of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next [*or* on such day as I may hereafter be required to attend], to answer further to the said charge, and in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

I hereby declare myself [*or* we jointly and severally declare ourselves and each of us] surety [*or* sureties] for the above-said that he shall attend at , in the Court of , on the day of next [*or* on such day as he may hereafter be required to attend], further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself [*or* we hereby bind ourselves] to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 . [*Signature.*]

XXVI.—Bond to prosecute or give Evidence.

(*See section 170.*)

I, [*name*], of [*place*], do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute [*or* to prosecute and give evidence, *or* to give evidence] in the matter of a charge of against one *A B*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 . [*Signature.*]

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

See section 218.

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. [*state the offence as in the charge*].

Dated this day of 18 . [*Signature.*]

XXVIII.—Charges.

(*See sections 221, 222, 223.*)

(I.)—Charges with one Head.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

On Penal Code, section 121.

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

On section 124.

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble *A B*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ," which statement you either knew or believed to be false, *or* did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A B*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(9) That you, on or about the day of , at , robbed [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

[*In cases tried by Magistrates substitute* " within my cognizance" *for* " within the cognizance of the Court of Session," *and in* (*c*) *omit* " by the said Court."]

(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person by name *A B*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 241.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A B*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*) :—]

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 302 and 304.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(4) That you, on or about the day of , at , in the course of the inquiry into , before , stated in evidence that " " and that you, on or about the day of at , in the course of the trial of , before , stated in evidence that " , " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(III.)—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* { High Court, / Magistrate, } *as the case may be*].

And you the said [*name of accused*] stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the [*state Court by which conviction was had*] at of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years that is to say, the offence of house-breaking by night [*describe the offence in the words used in*

Act X of 1882.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 245 and 258.*)

To the Superintendent [*or* Keeper] of the Jail at .

WHEREAS, on the day of 18 , [*name of prisoner*], the [1st, 2nd, 3rd, *as the case may be*] prisoner in case No. of the Calendar for 18 , was convicted before me [*name and official designation*] of the offence of [*mention the offence or offences concisely*] under section [*or* sections] of the Indian Penal Code [*or* of Act], and was sentenced to [*state the punishment fully and distinctly*];

This is to authorize and require you, the said Superintendent [*or* Keeper] to receive the said [*prisoner's name*] into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 250.*)

To the Superintendent [*or* Keeper] of the jail at .

WHEREAS [*name and description*] has brought against [*name and description of the accused person*] the complaint that [*mention it concisely*], and the same has been dismissed as frivolous [*or* vexatious], and the order of dismissal awards payment by the said [*name of complainant*] of the sum of Rupees as amends; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said [*name of complainant*], and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent [*or* Keeper] to receive the said [*name*] into your custody, together with this warrant, and him safely to keep in the said jail, for the said period of [*term of imprisonment*], subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXI.—SUMMONS TO A WITNESS.

(*See sections 68 and 252.*)

To of .

WHEREAS complaint has been made before me that of has [*or* is suspected to have] committed the offence of [*state the offence concisely, with time and place*], and it appears to me that you are likely to give material evidence for the prosecution;

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

You are hereby summoned to appear before this Court on the day of next, at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall, without just excuse, neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 326.*)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

[*Here enter the names of Jurors and Assessors.*]

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section 328.*)

To [*name*] of [*place*].

PURSUANT to a precept directed to me by the Court of Session of , requiring your attendance as an Assessor [*or* a Juror] at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at [*place*] at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of office this day of 18 .

[*Seal.*] [*Signature.*]

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section 374.*)

To the Superintendent [*or* Keeper] of the Jail at

WHEREAS at the Session held before me on the day of 18 , [*name of prisoner*], the [1st, 2nd, 3rd, *as the case may be*] prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorize and require you, the said Superintendent [*or* Keeper], to receive the said [*prisoner's name*] into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

Act X. of 1882.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

XXXV.—Warrant of Execution on a Sentence of Death.

(*See section 381.*)

To the Superintendent [*or* Keeper] of the Jail at

Whereas [*name of prisoner*] the [1st, 2nd, 3rd, *as the case may be*] prisoner in case No. of the Calendar at the Session held before me on the day of 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you, the said Superintendent [*or* Keeper], to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead at [*time and place of execution*], and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXVI.—Warrant after a Commutation of a Sentence.

(*See sections 381 and 382.*)

To the Superintendent [*or* Keeper] of the Jail at

Whereas at a Session held on the day of 18 , [*name of prisoner*], the [1st, 2nd, 3rd, *as the case may be*] prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas, by the order of the Court of [a duplicate of which is hereunto annexed], the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life [*or as the case may be*];

This is to authorize and require you, the said Superintendent [*or* Keeper], safely to keep the said [*prisoner's name*] in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order;

or

if the mitigated sentence is one of imprisonment say after the words "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section 386.*)

To [*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*].

Whereas [*name and description of the offender*] was, on the day of 18 , convicted before me of the offence of [*mention the offence concisely*], and sentenced to pay a fine of Rupees , and whereas the said [*name*], although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said [*name*] which may be found within the District of ; and if, within [*state the number of days or hours allowed*] next after such distress, the said sum shall not be paid [*or* forthwith], to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To the Superintendent [*or* Keeper] of the Jail at

WHEREAS at a Court holden before me on this day [*name and description of the offender*] in the presence [*or* view] of the Court committed wilful contempt;

And whereas for such contempt the said [*name of offender*] has been adjudged by the Court to pay a fine of Rupees , or in default to suffer simple imprisonment for the space of [*state the number of months or days*];

This is to authorize and require you, the Superintendent [*or* Keeper] of the said jail, to receive the said [*name of offender*] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [*term of imprisonment*], unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(*See section 485.*)

To [*name and designation of officer of Court*].

WHEREAS [*name and description*], being summoned [*or* brought before this Court] as a witness, and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question [*or* certain questions] put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for [*term of detention adjudged*];

This is to authorize and require you to take the said [*name*] into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)

To the Superintendent [*or* Keeper] of the Jail at

WHEREAS [*name, description, and address*] has been proved before me to be possessed of sufficient means to maintain his wife [*name*] [*or* his child (*name*), who is, by reason of (*state the reason*), unable to maintain herself (*or* himself)], and to have neglected [*or* refused] to do so, and an order has been duly made requiring the said [*name*] to allow to his said wife [*or* child] for maintenance the monthly sum of Rupees ; and whereas it has been further proved that the said [*name*], in wilful disregard of the said order, has failed to pay Rupees , being the amount of the allowance for the month [*or* months] of : And thereupon an order was made adjudging him to undergo simple [*or* rigorous] imprisonment in the said jail for the period of ;

Act X. of 1882.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

This is to authorize and require you, the said Superintendent [*or* Keeper], to receive the said [*name*] into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section 488.*)

To [*name and designation of the Police-officer or other person to execute the warrant*].

WHEREAS an order has been duly made requiring [*name*] to allow to his said wife [*or* child] for maintenance the monthly sum of Rupees , and whereas the said [*name*] in wilful disregard of the said order has failed to pay Rupees , being the amount of the allowance for the month [*or* months] of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said [*name*] which may be found within the District of , and if within [*state the number of days or hours allowed*] next after such distress the said sum shall not be paid [*or* forthwith], to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum: returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(*See sections 496 and 499.*)

I, [*name*], of [*place*], being brought before the Magistrate of [*as the case may be*] charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and, should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

I hereby declare myself [*or* we jointly and severally declare ourselves and each of us] surety [*or* sureties] for the said [*name*] that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself [*or* we bind ourselves] to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 18 .

[*Signature.*]

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 500.*)

To the Superintendent [*or* Keeper] of the Jail at [*or other officer in whose custody the person is*].

WHEREAS [*name and description of prisoner*] was committed to your custody under warrant of this Court, dated the day of , and has since with his surety [*or* sureties] duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said [*name*] from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section 514.*)

To the Police-officer in charge of the Police-station at .

WHEREAS [*name, description, and address of person*] has failed to appear on [*mention the occasion*] pursuant to his recognizance, and has, by such default, forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees [*the penalty in the bond*]; and whereas the said [*name of person*] has, on due notice to him, failed to pay the said sum, or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said [*name*] that you may find within the District of , by seizure and detention, and if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(*See section 514.*)

To of .

WHEREAS, on the day of 18 , you became surety for [*name*] of [*place*] that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of Rupees to Her Majesty the Queen, Empress of India; and whereas the said [*name*] has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of Rupees ;

You are hereby required to pay the said penalty, or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To of

WHEREAS, on the day of 18 , you became surety by a bond for [*name*] of [*place*] that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of Rupees to Her Majesty the Queen, Empress of India; and whereas the said [*name*] has been convicted of the offence of [*mention the offence concisely*], committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of Rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(*See section 514.*)

To of

WHEREAS [*name, description, and address*] has bound himself as surety for the appearance of [*mention the condition of the bond*], and the said [*name*] has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees [*the penalty in the bond*];

This is to authorize and require you to attach any moveable property of the said [*name*] which you may find within the District of by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(*See section 514.*)

To the Superintendent [*or* Keeper] of the Civil Jail at

WHEREAS [*name and description of surety*] has bound himself as a surety for the appearance of [*state the condition of the bond*], and the said [*name*] has therein made default, whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said [*name of surety*] has, on due notice to him, failed to pay the said sum, or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for [*specify the period*];

This is to authorize and require you, the said Superintendent [*or* Keeper], to receive the said [*name*] into your custody with this warrant, and him safely to keep in the said jail for the said [*term of imprisonment*], and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

SCHEDULE V.—(*continued*). Act X. of 1882.

FORMS—(*continued*).

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To [*name, description, and address*].

WHEREAS, on the day of 18 , you entered into a bond not to commit, &c. [*as in the bond*], and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of 18 .

[*Seal.*] [*Signature.*]

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To [*name and designation of Police-officer*] at the Police-station of .

WHEREAS [*name and description*] did, on the day of 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. [*as in the bond*], and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said [*name*], calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

RL6A This is to authorize and require you to attach, by seizure, moveable property belonging to the said [*name*] to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

[*Seal.*] [*Signature.*]

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section 514.*)

To the Superintendent [*or* Keeper] of the Civil Jail at .

WHEREAS proof has been given before me, and duly recorded, that [*name and description*] has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said [*name*] has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said [*name*] in the Civil Jail for the period of [*term of imprisonment*];

This is to authorize and require you, the said Superintendent [*or* Keeper] of the said Civil Jail, to receive the [*name*] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [*term of imprisonment*]; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

Act X. of 1882.

SCHEDULE V.—(*concluded*).

FORMS—(*concluded*).

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Police-officer in charge of the Police-station at

WHEREAS [*name, description, and address*] did, on the day of 18 , give security by bond in the sum of rupees for the good behaviour of [*name, &c., of the principal*], and proof has been given before me, and duly recorded, of the commission by the said [*name*] of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said [*name*] calling upon him to show cause why the said sum should not be paid, and he has failed to do so, or to pay the said sum;

This is to authorize and require you to attach, by seizure, moveable property belonging to the said [*name*] to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Superintendent [*or* Keeper] of the Civil Jail at

WHEREAS [*name, description, and address*] did, on the day of 18 , give security by bond in the sum of rupees for the good behaviour of [*name, &c., of the principal*], and proof of the breach of the said bond has been given before me and duly recorded, whereby the said [*name*] has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said [*name*] in the Civil Jail for the period of [*term of imprisonment*];

This is to authorize and require you, the said Superintendent [*or* Keeper], to receive the said [*name*] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [*term of imprisonment*]; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

[*Seal.*] [*Signature.*]

ACT XII. OF 1882.

THE INDIAN SALT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1882.

An Act for regulating the Duty on Salt, and for other Purposes.

Preamble.

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over, and in British India; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. Commencement.

1. This Act may be called "The Indian Salt Act, 1882;" and it shall come into force at once.

Local extent.

This section, sections 2, 7, and 8, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, and Ajmir and Mairwara, "to the Province of Sindh,"* to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor-General in Central India;

Power to extend Act.

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended, by order of the Governor-General in Council published in the *Gazette of India*, to any part of British India other than the territories, "province,"* and districts mentioned in the third paragraph of this section.

Repeal of enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published, and powers conferred under any such enactment, and now in force, shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published, and conferred hereunder.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"The said territories;"

the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends;

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* From such day as the Governor of Bombay in Council, by notification in the official Gazette, fixes in this behalf, the words quoted shall be repealed.—Act XX. of 1884, s. 1.

Act XII. of 1882.

"Assistant Commissioner;" "Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"Salt-revenue officer;" "Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a salt-revenue officer under this Act;

"Saltpetre;" "saltpetre" includes rasi, sajji, and all other substances manufactured from saline earth, and khari-nun and every form of sulphate or carbonate of soda;

"Manufacture of salt;" "manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence; and

"Kohat salt." "Kohat salt" means salt produced in the district of Kohat in the Panjáb.*

Powers of Commissioner of Division by whom to be exercised.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor-General in Council may, from time to time, appoint in this behalf.

Commissioner of Northern India Salt-revenue.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor-General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor-General in Council—

6. The Governor-General in Council may, from time to time, by rule—

to regulate manufacture and refining of salt and saltpetre;

(*a*) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

to fix fees for licenses;

(*b*) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—

	Rs.
License to manufacture and refine saltpetre, and to separate and purify salt in the process of such manufacture and refining ...	50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (*khari-nun*) by solar heat in evaporating pans	10
License to manufacture sulphate of soda (*khari-nun*) by artificial heat...	2
License to manufacture other saline substances	2

* This clause has been added by Act XIX. of 1890.

(*c*) determine the manner, time, and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;

to regulate the collection of duties;

(*d*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage, and sale of salt within such area;

to regulate possession of salt in vicinity of places where saltpetre is manufactured;

(*e*) define an area round any other place in which salt is manufactured, and regulate the possession, storage, and sale of salt within such area.

to regulate possession of salt in vicinity of places where salt is manufactured.

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of Governor-General in Council—

7. The Governor-General in Council may, from time to time, by rule consistent with this Act,—

(*a*) impose a duty, not exceeding three rupees per maund of 82-2/7 pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India;

to impose a duty on salt manufactured or imported by land;

(*b*) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted;

to reduce or remit duties;

(*c*) fix the minimum price at which salt excavated, manufactured, or sold by or on behalf of the Government of India, shall be sold.

to fix minimum price of salt excavated, &c., by Government.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. Subject to any general rules or special orders which the Governor-General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured, or sold by, or on behalf of, such Local Government, shall be sold.

Power of Local Government to fix minimum price of salt excavated, &c.

CHAPTER IIIA.*

INDUS PREVENTIVE LINE.

Power to define zones, and establish chains of posts.

8A. (*1*) The Governor-General in Council may, from time to time, by rule—

(*a*) define a zone of country not exceeding fifteen miles in breadth—

(*i*) along any portion of the river Indus and at such distance therefrom as he deems expedient, or

* Ch. IIIA. has been inserted by Act XIX. of 1890.

Act XII. of 1882.

(*ii*) in any tract extending from that river to the western frontier of the Panjáb,

(*b*) extend any such zone so as to include any ferry, or any portion of a railway, canal, or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(*c*) within such a zone establish a chain of posts extending along the zone.

(*2*) The establishment of a chain of posts under clause (*c*) of sub-section (*1*) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870.

Effect of defining a zone and establishing a chain of posts.

8B. When a zone has been defined and a chain of posts established under section 8A, the Governor-General in Council may, from time to time, by rule—

(*a*) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,

(*b*) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing or being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties.

9. Whoever commits any of the following offences (namely):—

(*a*) does anything in contravention of this Act or of any rule made hereunder;

(*b*) evades payment of any duty or charge payable under this Act or any such rule; or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (*a*) and (*b*) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or salt-revenue officer, may declare to be confiscated all works, materials, and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,* or under any enactment repealed by that Act, shall be punished with imprison-

* Repealed by this Act.

ment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9; Act XII. of 1882.

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

11. A charge of an offence under section 9* shall not be entertained except on the complaint of an Assistant Commissioner or other salt-revenue officer not inferior in rank to a sub-inspector; Charge by whom to be preferred.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers. Limitation.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class. Jurisdiction.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation. Confiscation of articles in respect of which offence committed.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package, or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package, or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor-General in Council may, from time to time, by rule direct that any salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III. of this Act. Power to levy additional duty as penalty.

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and if such salt does not exceed five sers in weight, to the Assistant Commissioner,

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* Here certain words, which were repealed by Act XII. of 1891, have been omitted.

Act XII. of 1882.

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

Punishment for connivance at offences mentioned in section 9.

14. Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9 shall, for every such offence, be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE, AND ARREST.

Power to search places where article is manufactured under license.

15. Any salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

Power to arrest.

17. Any salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Procedure of officer having reason to believe unlawful manufacture.

18. Whenever any salt-revenue officer, not inferior in rank to a sub-inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined, or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (*a*) the name, residence, and calling of the informant (if any); (*b*) the locality and description of the house, boat, or place where the officer believes that the salt or saltpetre is being so manufactured, refined, or stored; (*c*) the name of the person by or for whom the salt or saltpetre is so manufactured, refined, or stored; and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined, or stored;

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat, or place to be searched is situate to attend him;

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of police not inferior in rank to a head-constable), enter and search any house, boat, or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined, or stored;

and, in case of resistance, may break open any door and force and remove any other obstacle to such entry; Act XII. of 1882.

and may seize and carry away all salt and saltpetre so manufactured, refined, or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search, and, if he thinks proper, arrest the occupier of the said house, boat, or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat, or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat, or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Failure of police-officer to attend.

19. Any officer in charge of a police-station who, on application in writing made by a salt-revenue officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head-constable, so to attend, shall, for every such offence, be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure, and search.

20. Whenever a salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat, or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate), within forty-eight hours next after such arrest, seizure, or entry, make a full report of all the particulars of such arrest, seizure, or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of police attending any search made under section 18 shall report the same to his official superior.

Procedure in respect of articles seized.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

Act XII. of 1882.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure on detention of article subject to additional duty.

22. Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the orders of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the salt-revenue officer, detaining the same, such article shall be at once released.

When an article is so detained, it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in respect of person arrested.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers required to assist salt-revenue officers.

24. All officers of police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the salt-revenue officers in the execution of this Act.

Vexatious search, seizure, &c., by salt-revenue officer.

25. Any salt-revenue officer who—

(*a*) without reasonable ground of suspicion searches or causes to be searched any house, boat, or place;

(*b*) vexatiously and unnecessarily detains, searches, or arrests any person;

(*c*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(*d*) commits, as such officer, any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall, for every such offence, be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees. Act XII. of 1882.

Any person wilfully and maliciously giving false information, and so causing a search to be made under this Act, shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

A salt-revenue officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (*b*) or clause (*c*) of the first paragraph of this section if the search is authorized by any rule under clause (*b*) of section 8 B, and the detention or seizure is such as is necessary for the purposes of such search.*

Power to regulate seizures and disposal of things seized.

26. The Governor-General in Council may, from time to time, make rules consistent with this Act to regulate the seizure, disposal, and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

(*b*) that, when anything is seized, and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing, and tender the duty, penalties, and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties, and charges defrayed from the proceeds of the sale;

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

Power to prohibit import and transit of salt.

27. The Governor-General in Council may, from time to time, by rule prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

Nothing in this section shall be deemed to affect Chapter IIIA. of this Act or any rule under that chapter.†

Further matters for which Governor-General in Council may make rules.

28. In addition to the rules which the Governor-General in Council is hereinbefore empowered to make, he may, from time to time, make rules consistent with this Act, to regulate the following matters, namely:—

* This paragraph has been added by Act XIX. of 1890, s. 3.
† This paragraph has been added by Act XIX. of 1890, s. 4.

Act XII. of 1882.

(*a*) the persons by whom, and the time, place, and manner at or in which, anything to be done under this act shall be done;

(*b*) the cases in which, and the officers to whom, and the conditions subject to which, orders given by salt-revenue officers under this Act shall be appealable;

(*c*) the fee to be charged on account of any license, pass, certificate, dakhila, rawana, or other such document issued under this Act;

and generally to carry out the provisions herein contained.

Publication of rules.

29. All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Power to confer powers of Assistant Commissioner and salt-revenue officers.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor-General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on salt-revenue officers.

31. [*Repealed by Act XIX. of 1890.*]

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VIII. of 1875 ...	The Inland Customs Act, 1875.	The whole.
II. of 1876 ...	The Burma Land and Revenue Act, 1876.	Section 39, clause (*b*), and in clause (*c*) of the same section the words and letter "under clause (*b*)."
XVIII. of 1877 ...	The Salt Act, 1877 ...	The whole.

REGULATION.

Number and year.	Short title.	Extent of repeal.
III. of 1877 ...	The Ajmir Laws Regulation, 1877.	Sections 36 and 37.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VII. of 1864 ...	The Salt Act, 1864 ...	Section 9.

ACT XIV. OF 1882.

CODE OF CIVIL PROCEDURE.

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CODE OF CIVIL PROCEDURE.

ACT XIV. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MARCH 1882.

*An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.**

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

Short title. Commencement. **1.** This Act may be cited as "The Code of Civil Procedure," and it shall come into force on the first day of June 1882.

Local extent. This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV. of 1874.†

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* For power to modify the Code in its application to suits between landlords and tenants in Bengal, after the Bengal Tenancy Act comes into operation, see Act VIII. of 1885, s. 143. For further modifications made by that Act, see foot-notes further on.

† The whole Code (except ss. 1 and 3) has been extended to the following Scheduled Districts, namely:—

Sindh	See *Gazette of India*, June 3, 1882, Pt. I., p. 217.			
The Districts of Hazáríbagh, Lohárdaga, and Mánbhúm, the Parganá of Dhálbhúm in the District of Singhbhúm, and the Mahál of Angúl ...	Ditto	ditto	ditto	p. 218.
Pargana Jaunsár Báwar in the Dehra Dun District, and the scheduled portion of the Mirzápur District ...	Ditto	ditto	ditto	p. 217.
The Scheduled Districts of the Panjáb	Ditto	ditto	ditto	p. 219.
Coorg[1]	Ditto	ditto	ditto	p. 217.
Ajmer and Merwara[2]. ...	Ditto	ditto	July 29, 1882,	p. 289.
The Districts of Kamrup, Nowgong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Duárs), Silhat, and Káchár (excluding the North Káchár Hills)	Ditto	ditto	June 3, 1882,	p. 218.
The Cantonment of Morar ...	Ditto	ditto	July 29, 1882,	p. 289.

[1] For modifications in the Code as in force in Coorg, see the Coorg Courts Regulations, II. of 1881 and I. of 1885, and s. 3 of this Act.

[2] For modifications in the Code as in force in Ajmer and Merwára, see the Ajmer Courts Regulation, I. of 1877, and s. 3 of this Act.

Act XIV of 1882.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"chapter:" "chapter" means a chapter of this Code:

"District:" "District Court:" "district:" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court, and every Court of Small Causes, shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader:" "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court:

"Government Pleader:" "Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader:

"Collector:" "Collector" means every officer performing the duties of a Collector of land-revenue:

"decree:" "decree" means the formal expression of an adjudication, upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition.

"order:" "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"judgment:" "judgment" means the statement given by the Judge of the grounds of a decree or order:

"Judge:" "Judge" means the presiding officer of a Court

The whole Code (except ss. 1, 3,[1] 15, 19, 23, 24, 25, and 652[1]) has been extended to the Jhánsí Division ... See *Gazette of India*, June 3, 1882, Pt. I., p. 217.

The whole Code (except ss. 1 and 3 and so much thereof as authorizes the sale of immoveable property in execution of a decree, not being a decree directing the sale of such property) has been extended to the Scheduled Districts of the Central Provinces ... ... Ditto ditto ditto ditto.

As to the application of the Code to the Andaman and Nicobar Islands, see the Andamans and Nicobar Islands Regulation, I. of 1884, s. 4.

As to Upper Burma, the Code is in force in the town of Mandalay only.—Act XX. of 1886, sch. ii.

[1] The matters referred to in these sections are provided for in the Jhánsí Courts Act XVIII. of 1867.

"judgment-debtor:" "judgment-debtor" means any person against whom a decree or order has been made:

"decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

"decree-holder:"

"written:" "written" includes printed and lithographed, and "writing" includes print and lithography:

"signed:" "signed" includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to:

"foreign Court:" "foreign Court" means a Court situate beyond the limits of British India, and not having authority in British India, nor established by the Governor-General in Council:

"foreign judgment:" "foreign judgment" means the judgment of a foreign Court:*

"public officer:" "public officer" means a person falling under any of the following descriptions (namely):—

every Judge;

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

"Government."

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* For limitation of suits on foreign judgments, see Act XV. of 1877, sch. ii., art. 117, and s. 3 of this Act.

Act XIV. of 1882.

Enactments repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed, and framed hereunder.

References in previous Acts.

And when, in any Act, Regulation, or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII. of 1859, Act No. XXIII. of 1861, or the "Code of Civil Procedure," or to Act No. X. of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Saving of procedure in suits instituted before 1st June 1882.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Appeals pending on 29th July 1879.

Every appeal pending on the twenty-ninth day of July 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X. of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X. of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb, and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

the Central Provinces Courts Act, 1865:

the Burma Courts Act, 1875:

the Panjáb Courts Act, 1877:*

the Oudh Civil Courts Act, 1879:

or any law heretofore or hereafter passed under the Indian Councils Act 1861,† by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861,† by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where, under any of the said Acts, concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

Power to modify the Code in its application to Revenue Courts.

4A. (*1*) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the

* See now Act XVIII. of 1884.

† 24 and 25 Vic., c. 67.

previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe. Act XIV. of 1882.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue, or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force.*

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. IX. of 1887,† and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras, and Bombay) exercising the jurisdiction of a Court of Small Causes.‡ The other chapters and sections of this Code do not extend to such Courts.

Sections extending to Provincial Small Cause Courts.

6. Nothing in this Code affects the jurisdiction or procedure—

Saving of jurisdiction and procedure—

(*a*) of Military Courts of Request;

(*a*) of Military Courts of Request;§

(*b*) of officers appointed to try small suits in Bombay;

(*b*) [*Repealed by Act VIII. of 1887, section 2, and schedule.*]

(*c*) of Village Munsifs and Village Panchayats in Madras;

(*c*) of Village Munsifs or Village Panchayats under the provisions of the Madras Code;‖ or

(*d*) of Recorder of Rangoon sitting as Insolvent Court.

(*d*) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon or Maulmain;¶

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to

(*a*) the jurisdiction exercised by certain jagirdars and other authorities invested with powers under the provisions of Bombay Regulation XIII. of 1830 and Act No. XV. of 1840, in the cases therein mentioned; and

Saving of certain Bombay laws.

(*b*) cases of the nature defined in the enactments specified in the third schedule hereto annexed;

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

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* This section has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 3.

† See the Provincial Small Cause Courts Act (IX. of 1887), s. 2.

‡ As to portions of this Code extending to these Courts, see Act XV. of 1882, s. 23.

§ See 44 and 45 Vic., c. 58, ss. 148-150, and Acts XI. of 1841 and XII. of 1842.

‖ See Mad. Regs. IV. and V. of 1816 and Act VIII. of 1840.

¶ The words "Akyab or Bassein" have been repealed by Act XII. of 1891.

Act XIV. of 1882

Presidency Small Cause Courts.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter XXXIX., "and by the Presidency Small Cause Courts Act, 1882,"* this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras, and Bombay.†

Division of Code.

9. This Code is divided into ten Parts as follows :—

The first Part:	Suits in General.
The second Part:	Incidental Proceedings.
The third Part:	Suits in particular Cases.
The fourth Part:	Provisional Remedies.
The fifth Part:	Special Proceedings.
The sixth Part:	Appeals.
The seventh Part:	Reference to and Revision by the High Court.
The eighth Part:	Review of Judgment.
The ninth Part:	Special Rules relating to the Chartered High Courts.
The tenth Part:	Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be, in any civil proceeding, exempted from the jurisdiction of any of the Courts.

Courts to try all civil suits unless specially barred.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Pending suits.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between par-

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* The words quoted have been inserted by Act XV. of 1882, s. 3.

† The second paragraph of this section has been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 4. The following is the repealed paragraph: "But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code, or any part thereof, except so far as relates to appeals and reviews of judgment."

ties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India, having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council. Act XIV. of 1882.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

Res judicata.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might, and ought to, have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party, or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bonâ fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(*c*) if it is, in the opinion of the Court before which it is produced, contrary to natural justice:

(*d*) if it has been obtained by fraud:

(*e*) if it sustains a claim founded on a breach of any law in force in British India.

Act XIV. of 1882.

Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an Order of Her Majesty in Council, the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed.*

CHAPTER II.

OF THE PLACE OF SUING.

Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.†

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

(*a*) for the recovery of immoveable property,

(*b*) for the partition of immoveable property,

(*c*) for the foreclosure or redemption of a mortgage of immoveable property,

(*d*) for the determination of any other right to, or interest in, immoveable property,

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property, held by or on behalf of the defendant, may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means property situate in British India.

Place for institution of suit where local limits of jurisdiction of Courts are uncertain.

16A ‡ (*1*) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect, and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction;

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* This paragraph has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 5.

† This section has been repealed in Ajmere and Merwara.—See Reg. I. of 1877, s. 2 and sch., and *supra*, s. 3.

‡ This section has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 6.

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction. Act XIV of 1882.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court, that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto.

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(*a*) the cause of action arises; or

(*b*) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(*c*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place, and also a lodging at another place for temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Explanation III.**—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

(i) the place where the contract was made;

(ii) the place where the contract was to be performed, or performance thereof completed;

(iii) the place where, in performance of the contract, any money to which the suit relates was expressly or impliedly payable.

Illustrations.

(*a*) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(*b*) A resides at Simla, B at Calcutta, and C at Delhi. A, B, and C, being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

* This explanation (iii.) has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 7.

Act XIV of 1882.

Suits for compensation for wrongs to person or moveables.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may, at his option, sue in either of the said Courts.

Illustrations.

(*a*) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(*b*) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(*c*) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

Suits for immoveable property situate in single district; but within jurisdiction of different Courts.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

Suits for immoveable property situate in different districts.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Power to stay proceedings where all defendants do not reside within jurisdiction.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Application when to be made.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

Remission of Court-fee where suit instituted in another Court.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any Court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

22. Where a may be instituted in more Courts than one, and such Courts are subordinate to the same Appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the Appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure where Courts in which suit may be instituted subordinate to same Appellate Court.

23. Where such Courts are subordinate to different Appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections (if any) of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure where they are not so subordinate.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

Procedure where they are subordinate to different High Courts.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objection (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court shall, after considering the objections (if any) of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

25.* The High Court or District Court may, on the application of any of the parties, after giving notice to the parties, and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of First Instance or in a Court of Appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature, and the amount or value of its subject-matter.

Transfer of suits.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

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* S. 25 has been repealed in Ajmere and Merwara.—See Reg. I. of 1877, s. 2 and sch., also s. 26, *ibid*, and *supra*, s. 3.

Act XIV. of 1882.

CHAPTER III.

OF PARTIES, AND THEIR APPEARANCES, APPLICATIONS, AND ACTS.

Persons who may be joined as plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs of the suit, otherwise directs.

Court may substitute or add plaintiff for or to plaintiff suing.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, "at any stage of the suit,"* if satisfied that the suit has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons, "with his or their consent,"* to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Persons who may be joined as defendants.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same matter.

And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of parties liable on same contract.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis, and promissory notes.

One party may sue or defend on behalf of all in same interest.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such cases give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

Suit not to fail by reason of mis-joinder.

31. No suit shall be defeated by reason of the mis-joinder of parties, and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

Court may dismiss or add parties.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 8.

and the Court may, at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added as plaintiff or next friend.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Where defendant added, plaintiff to amend.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

Time for taking objections as to non-joinder or mis-joinder.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

Authority to be in writing signed and filed.

The authority shall be in writing, signed by the party giving it, and shall be filed in Court.

Recognized Agents and Pleaders.

Appearances, &c., may be in person, by recognized agent, or by pleader.

36. Any appearance, application, or act in or to any Court required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct.

Act XIV. of 1882.

Recognized agent.

37.* The recognized agents of parties by whom such appearances, applications, and acts, may be made or done are—

(*a*) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act, is made or done, authorizing them to make and do such appearances, applications, and acts on behalf of such parties;

Persons holding powers-of-attorney from parties out of jurisdiction.

(*b*) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney, authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

Certificated mukhtárs.

(*c*) persons carrying on trade or business for, and in the names of, parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act, is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.†

Persons carrying on trade or business for parties out of jurisdiction.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications, and acts, may be made and done, shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

Recognized agents in Panjáb, Oudh, and Central Provinces.

38.* Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same has been served on the party in person, unless the Court otherwise directs.

Service of process on recognized agent.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

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* In Oudh substitute the following for ss. 37 and 38:—

"The recognized agents of parties by whom such applications and appearances may be made are—

"A permanent servant, partner, relation, or friend, whom the Court may admit as a fit person to represent a party, and especially persons holding powers-of-attorney from absent parties, parties carrying on business on behalf of bankers and traders, managing agents of landlords, nearest male relations of women, and persons *ex officio* authorized to act for Government or for any Prince or Chief.

"Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognized agent, unless the Court shall otherwise direct; and anything which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given to, or processes served on, a recognized agent, relative to a suit, shall be effectual for all purposes, in relation to the suit, as if the same had been given to, or served on, the party in person, unless the Court shall otherwise direct; and all the provisions of this Act, relative to the service of notices or processes on a party to a suit, shall be applicable to the service of notices and processes on such recognized agent."—See Act XVIII. of 1876, s. 18, and *supra*, s. 3.

† For additional "recognized agents" in Ajmere and Merwára, see Reg. I. of 1877 s. 28.

39. The appointment of a pleader to make or do any appearance, application, or act as aforesaid, shall be in writing, and such appointment shall be filed in Court.

Appointment of pleader.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of process on pleader.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to receive process.

Such appointment may be special or general, and shall be made by an instrument in writing, signed by the principal; and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

His appointment to be in writing, and to be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

Omission to sue for one of several remedies.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

Act XIV. of 1882.

Only certain claims to be joined with suit for recovery of land.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

(*a*) claims in respect of mesne-profits or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage.

Claims by or against executor, administrator, or heir.

Rule b.—No claim by or against an executor, administrator, or heir as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Plaintiff may join several causes of action.

45. Subject to the rules contained in Chapter II. and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

Court may order separation.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion, or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

Defendant may apply to confine suit.

46. Any defendant, alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit, may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

Court, on hearing application, may exclude some causes, and order amendment.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

Act XIV of 1882.

OF THE INSTITUTION OF SUITS.

Suits to be commenced by plaint.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Language of plaint.

49. The plaint must be distinctly written in the language of the Court: provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description, and place of residence of the plaintiff;

(*c*) the name, description, and place of residence of the defendant, so far as they can be ascertained;

(*d*) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(*e*) a demand of the relief which the plaintiff claims; and

(*f*) if the plaintiff has allowed a set-off, or relinquished a portion of his claim, the amount so allowed or relinquished.

In money suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits.

In a suit for mesne-profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

Where plaintiff sues as representative.

When the plaintiff sues in a representative character, the plaint should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(*a.*) A sues as B's executor. The plaint must state that A has proved B's will.

(*b.*) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(*c*) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

Defendant's interest and liability to be shown.

The plaint must show that the defendant is, or claims to be, interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Act XIV. of 1882

Grounds of exemption from limitation-law.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed.

Plaints to be signed and verified.

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case:

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

Contents of verification.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed and attested.

The verification shall be signed by the person making it.

When plaint may be rejected, returned for amendment, or amended.

53.* The plaint may, at the discretion of the Court,—

(*a*) at, or at any time before, the settlement of issues, be rejected, if it does not disclose a cause of action;

(*b*) at, or at any time before, the settlement of issues, be returned for amendment within a time to be fixed by the Court, and upon terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

(*i*) is not signed and verified as hereinbefore required,

(*ii*) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,

(*iii*) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or

(*iv*) is not framed in accordance with the provisions of section 42;

(*c*) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit:

Provided that a plaint shall not be amended, either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

When a plaint is amended under this section, the amendment shall be attested by the signature of the Judge.

When plaint shall be rejected.

54. The plaint shall be rejected in the following cases:—

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

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* S. 53 has been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 9, for the one originally enacted.

(*b*) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so :

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law :

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on rejecting plaint.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

When rejection of plaint does not preclude presentation of fresh plaint.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not, of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When plaint shall be returned to be presented to proper Court.

57. The plaint shall be returned to be presented to the proper Court in the following cases :—

(*a*) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :

(*b*) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented :

(*c*) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits.

Procedure on returning plaint.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on admitting plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it ; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Concise statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

Act XIV. of 1882.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose, and called the Register of Civil Suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Register of suits.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall, at the same time, deliver the document, or a copy thereof, to be filed with the plaint.

Production of document on which plaintiff sues. Delivery of document or copy.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

List of other documents.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

Statement in case of documents not in his possession or power.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.

Suits on lost negotiable instruments.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Production of shop-book.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, and attesting the copy if found correct, shall return the book to the plaintiff, and cause the copy to be filed.

Original entry to be marked and returned.

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Inadmissibility of document not produced when plaint filed.

Nothing in the section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

64. When the plaint has been registered, and the copies of concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

Summons.

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint, and admitted the plaintiff's claim.

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides—

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or, where there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the Court-house.

within 50 or, where there is railway, 200 miles.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly.

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Fixing day for appearance of defendant.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery or transmission of summons for service.

72.* (*1*) If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

(*2*) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post, or in such other manner as the Court may direct.

Mode of service.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge, or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person, when practicable, or on his agent.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

Service on agent in charge in suits for immoveable property.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

When service may be on male member of defendant's family.

78. If in any suit the defendant cannot be found, and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

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* S. 72 has been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 10, for the one originally enacted.

Explanation.—A servant is not a member of the family within the meaning of this section. Act XIV. of 1882.

Person served to sign acknowledgment.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service.

80 If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

or cannot be found.

the serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides, and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when, and the manner in which, the summons was served.

Examination of serving-officer.

82. "When a summons is returned under section 80, the Court shall, if the return under that section has not been verified by the affidavit of the serving-officer, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings,"* and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served, or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that, for any other reason, the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

When service substituted, time for appearance to be fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 11, for the words, "When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings," as originally enacted.

Act XIV. of 1882.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court, and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof proceed as if it had been issued by such Court and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

86. Whenever any process, issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay, and Rangoon, is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts.

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service on defendant in jail.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail, and by the defendant.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued with a statement of the service endorsed thereon, and signed as provided in section 87.

Procedure if jail be in different district.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India, and has no agent to accept service.

90.* If there is a British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor-General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent, or Court, by post or otherwise, for the purpose of being served

Service in foreign territory through British Resident or Court.

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* S. 90 has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 12.

upon the defendant; and, if the Resident, Agent, or Superintendent, or the Judge of the Court, returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service. Act XIV. of 1882.

91. The Court may, notwithstanding anything hereinbefore contained substitute for the summons a letter signed by the Judge, or such officer as he appoints in this behalf when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

Substitution of letter for summons.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Mode of sending such letter.

Service of Process.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Process to be served at expense of party issuing.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Costs of service.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Notices and orders in writing how served.

Postage.

95. Postage, where chargeable on any notice, summons, or letter issued under this Code, and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Postage.

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing be adjourned to a future day fixed by the Court.

Parties to appear on day fixed in summons for defendant to appear and answer.

Act XIV. of 1882.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed:

Proviso.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent

If neither party appears, suit to be dismissed.

98. If, on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

In such case plaintiff may bring fresh suit,

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal, and appoint a day for proceeding with the suit.

or Court may restore suit to its file.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

99A. If, after a summons has, whether before or after the first day of June 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons, and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure if only plaintiff appears,

100. If the plaintiff appears, and the defendant does not appear, the procedure shall be as follows:—

when summons duly served,

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte*:

when summons not duly served,

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:

when summons served, but not in due time.

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

102. If the defendant appears, and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure where defendant only appears.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Decree against plaintiff by default bars fresh suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Procedure where defendant residing out of British India does not appear.

105. *If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.*

Procedure in case of non-attendance of one or more of several plaintiffs.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Proceedure in case of non-attendance of one or more of several defendants.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Act XIV. of 1882.

Of setting aside Decrees ex parte.

Setting aside decree *ex parte* against defendant.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

No decree to be set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

Written statements.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements, and place them on the record.

Particulars of set-off to be given in written statement.

111. If in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally removeable by him from the plaintiff, and if, in such claim of the defendant against the plaintiff, both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set off.

Inquiry.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set off does not exceed the pecuniary limits of its jurisdiction, the Court shall set off the one debt against the other.

Effect of set-off.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both in the original and on the cross claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(*a*) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee, B dies and D takes out administration to B's effects. C pays Rs 1,000 as surety for D. Then D sues C for the legacy. C cannot set off the debt of Rs. 1 000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000

(*b*) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(*c*) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(*d*) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite, pecuniary demands may be set off.

(*e*) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A, and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(*f*) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(*g*) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(*h*) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit :

No written statement to be received after first hearing.

Provided that the Court may, at any time, require a written statement or additional written statement from any of the parties, and fix a time for presenting the same :

Provisoes.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Procedure when party fails to present written statement called for by Court.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Frame of written statements.

Every such statement shall be divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

Written statements to be signed and verified.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Power of Court as to argumentative, prolix, or irrelevant written statement.

When any amendment is made under this section, the Judge shall attest it by his signature.

Attestation of amendments.

Act XIV. of 1882.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

Effect of rejection.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not, expressly or by necessary implication, admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in plaint and written statements admitted or denied.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put, in the course of such examination, questions suggested by either party.

Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer, if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

Consequence of refusal or inability of pleader to answer.

If such party fails, without lawful excuse, to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

121. Any party may, at any time, by leave of the Court, deliver, through the Court, interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer:

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such

defendant has previously tendered a written statement, and such statement has been received and placed on the record. Act XIV. of 1882.

Service of interrogatories.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81, and 82, shall, in the latter case, apply, so far as may be practicable.

Inquiry into propriety of exhibiting interrogatories.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Service of interrogatories on officer of corporation or company.

124. If any party to a suit be a body corporate or a joint-stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Power to refuse to answer interrogatories as irrelevant, &c.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bond fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof, or within such further time as the Judge may allow.

Procedure where party omits to answer sufficiently.

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further either by affidavit or by *viva voce* examination, as the Judge may direct: Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing, signed by the other party or his pleader, and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made,

Act XIV. of 1882. the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Power to order discovery of document.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Affidavit in answer to such order.

Every affidavit made under this section shall specify which (if any) of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

Power to order production of documents during suit.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

Notice to produce for inspection documents referred to in plaint, &c.

131. Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

Consequence of non-compliance with such notice.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Party receiving such notice to deliver notice when and where inspection may be had.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time, within three days from such delivery, at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which (if any) of the documents he objects to produce, and on what grounds.

Application for order of inspection.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

Application to be founded on affidavit.

134. Except in the case of documents referred to in the plaint, written statement, or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit, showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made.

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection. Act XIV of 1882.

Power to order issue, or question on which right to discovery depends to be first determined.

136. If any party fails to comply with any order under this chapter to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not appeared and answered;

Consequences of failure to answer or give inspection.

and the party interrogating, or seeking discovery, production, or inspection, may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record, or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

138. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Documentary evidence to be in readiness at first hearing.

139. No documentary evidence in the possession or power of any party, which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

Effect of non-production of documents.

Act XIV. of 1882.

Documents to be received by Court.

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may, from time to time, direct.

Rejection of irrelevant or inadmissible documents.

The Court may, at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidence.

141. (*1*) Subject to the provisions of the next following sub-section, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(*a*) the number and title of the suit,

(*b*) the name of the person producing the document,

(*c*) the date on which it was produced, and

(*d*) a statement of its having been so admitted,

and the endorsement shall be signed by the Judge.

(*2*) If a document so admitted is an entry in a book, account, or record, and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy, and the endorsement thereon shall be signed by the Judge.*

Endorsements on copies of admitted entries in books, accounts, and records.

141A.* (*1*) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry.

(*2*) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(i) where the record, book, or account, is produced on behalf of a party, then by that party; or

(ii) where the record, book, or account, is produced in obedience to an order of the Court acting of its own motion, then by either of any party.

(*3*) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared, and attested in manner mentioned in section 62, mark the entry, and cause the book, account, or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

142.* When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*), and (*c*) of section 141, sub-section (*1*), and a statement of its having been rejected, and the endorsement shall be signed by the Judge.

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* Ss. 141, 141A, 142, and 142A, have been substituted by the Civil Procedure Code Amendment Act (VII of 1888), s. 13, for ss. 141 and 142 as originally enacted.

Recording of admitted and return of rejected documents.

142A.* (*1*) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 141A, shall form part of the record of the suit. Act XIV. of 1882.

(*2*) Documents not admitted in evidence shall not form part of the record, and shall be returned to the parties respectively producing them.

Court may order any document to be impounded.

143. Notwithstanding anything contained in "section 62; section 141A, sub-section (*3*); or section 142A, sub-section (*2*)"† the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

When document admitted in evidence may be returned.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or if an appeal has been preferred, then, after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

When document may be returned before time limited.

Provided that a document may be returned at any time before either of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Certain documents not to be returned.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Receipt to be given for returned document.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

Framing of issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

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* Ss. 141, 141A, 142, and 142A, have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 13, for ss. 141 and 142 as originally enacted.

† The words and figures quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 14, for the words and figures, "sections 62, 141, and 142."

Act XIV. of 1882.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (*a*) issues of fact; (*b*) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements (if any), and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may frame the issues from all or any of the following materials:—

(*a*) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(*b*) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(*c*) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Power to amend, add, and strike out issues.

149. The Court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issue.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing—

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(*b*) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

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(*c*) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,—

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and, upon the judgment so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If, at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

If parties at issue on questions of law or fact.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues;

Court may determine issue,

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

and pronounce judgment.

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present, and none of them object,

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If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties or to any of them, and may, from time to time, adjourn the hearing of the suit.

Costs of adjournment.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Procedure if parties fail to appear on day fixed.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

Court may proceed notwithstanding either party fails to produce evidence, &c.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

Summons to attend to give evidence or produce documents.

159. The parties may, after the summons has been delivered "or sent"* for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 15.

160. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witnesses to be paid into Court on applying for summons.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Scale of expenses.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

Procedure where insufficient sum paid in.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Time, place, and purpose of attendance to be specified in summons.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce document.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Power to require persons present in Court to give evidence

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Summons how served.

Act XIV. of 1882.

Time for serving summons.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Attachment of property of absconding witness.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court "shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, "* touching the non-service;

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears, attachment may be withdrawn.

169. If, on the attachment of his property, such person appears, and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine, not exceeding five hundred rupees, as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine (if any):

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 16, for the words, "shall examine the serving-officer on oath," as originally enacted.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness, or require him to produce such document. Act XIV of 1882.

Court may of its own accord summon as witnesses strangers to suit.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document.

173. No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart.

When they may depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned, and attending, departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Consequences of failure to comply with summons.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

Procedure when witness apprehended cannot give evidence or produce documents.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170, shall, *mutatis mutandis*, apply.

Procedure when witness absconds.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

Persons bound to attend in person.

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or (where there is railway-communication for five sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the Court-house.

Act XIV. of 1882.

Consequence of refusal of party to give evidence when called on by Court.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Rules as to witnesses to apply to parties summoned.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Statement and production of evidence by party having right to begin.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Rules as to right to begin.

Explanation.—The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff, and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence by other party.

Reply by party beginning.

180. The other party shall then state his case and produce his evidence (if any). The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues, or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

181.* The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

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* In Oudh, substitute the following for ss. 181-190:—

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed and shall form part of the record of the case.

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given."

182.* In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same, and shall sign it.

How evidence shall be taken in appealable cases.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence, as taken down in writing, shall be interpreted to him in the language in which it was given.

When deposition to be interpreted.

184.† In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by Judge.

185.† Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as given in English taken down in English, the Judge may so take it down with his own hand.

When evidence may be taken in English.

185A.‡ (1) The Local Government may, by notification in the official Gazette, direct, with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner prescribed in the foregoing sections, be taken down by him with his own hand in the English language.

Power for Local Government to require evidence to be recorded in English.

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it.

"If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection.

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination.

"If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record."—See Act XVIII. of 1876, s. 19, and *supra*, s. 3.

* In the Central Provinces, substitute the following for s. 182:—

"A note of the essential points of the evidence of each witness shall be made at the time, and in the course of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case."—See Act II. of 1879, s. 2, and *supra*, s. 3.

† Ss. 184 and 185 have been repealed in the Central Provinces.—See Act II. of 1879, s. 2, and *supra*, s. 3.

‡ S. 185A has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 17.

Act XIV. of 1882.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

(3) Evidence taken down under sub-section (1) or sub-section (2) shall be in the form mentioned in section 184, and be read over and signed, and, as occasion may require, interpreted and corrected, as if it were evidence taken down under that section.

(4) The Local Government may, by notification in the official Gazette revoke or vary a direction notified under sub-section (1).

Any particular question and answer may be taken down.

183. The Court may, of its own motion, or on the application of any party or his pleader, take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

Questions objected to and allowed by Court.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeanour of witnesses.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases.

189 * In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Judge unable to make such memorandum to record reason of his inability.

190.† If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

Power to deal with evidence taken down by another Judge.

191.† (1) Where the Judge taking down any evidence, or causing any memorandum to be made, under this chapter, is prevented by death, transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it.

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* S. 189 has been repealed in the Central Provinces.—See Act II. of 1879, s. 2, and *supra*, s. 3.

† In the Central Provinces substitute the following for ss. 190 and 191:—

"190 If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record.

"191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made."—See Act II. of 1879, s. 2, and *supra*, s. 3.

(*a*) The provisions of sub-section (*1*) shall apply, so far as they can be made applicable, to a suit transferred under section 25: Act XIV. of 1882.

Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined, and take their evidence afresh.*

Power to examine witness immediately.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

Court may recall and examine witness.

193. The Court may, at any stage of the suit, recall any witness who has been examined, and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

A Court continuing a suit under section 191 may recall and re-examine a witness who has departed in accordance with section 173.†

CHAPTER XVI.

OF AFFIDAVITS.

Power to order any point to be proved by affidavit.

194. Any Court of first instance and any Appellate Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that, where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of declarant for cross-examination.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance, for cross-examination, of the declarant.

Such attendance shall be in Court, unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

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* S. 191 has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 18.

† This paragraph has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 19.

Act XIV. of 1882.

Matters to which affidavits shall be confined.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered.

197. In the case of any affidavit under this Code—

(*a*) any Court or Magistrate, or

(*b*) any officer whom a High Court may appoint in this behalf, or

(*c*) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

Judgment when pronounced.

198. The Court, after the evidence has been duly taken, and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor, but not pronounced.

Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

Translation of judgment.

201 Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Judgment to be dated and signed.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of Small Cause Courts.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Judgments of other Courts.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Act XIV. of 1882.

Court to state its decision on each issue. Exception.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Date of decree.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Contents of decree.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties, and in what proportions such costs are to be paid.

Power to amend decree.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment, or to correct such error: Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

Decree for recovery of immoveable property.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of moveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decrees for payment of money may order certain interest to be paid on principal sum adjudged.

209. "When a decree is for the payment of money,"* the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.†

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 20, for the words, "When the suit is for a sum of money due to the plaintiff," as originally enacted.

† This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 20.

Act XIV. of 1882.

Decree may direct payment by instalments

210. In all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest.

Order, after decree, for payment by instalments.

And, after the passing of any such decree, the Court may, on the application of the judgment-debtor, and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

In suits for land, Court may decree payment of mesne-profits with interest.

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

Explanation.—"Mesne-profits" of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received, therefrom, together with interest on such profits.

Court may determine amount of mesne-profits prior to suit, or may reserve inquiry.

212. When the suit is for the recovery of possession of immoveable property and for mesne-profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property, and direct an inquiry into the amount of mesne-profits, and dispose of the same on further orders.

Administration-suit.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons, who, in any such case, would be entitled to be paid out of such property, may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.*

* The words, "Applications under s. 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section" have been repealed by Act IV. of 1886, s. 2.

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that, if such money and costs are not so paid, the suit shall stand dismissed with costs. Act XIV of 1882.

Suit to enforce right of pre-emption.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for dissolution of partnership.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Suit for account between principal and agent.

216. "If the defendant has been allowed a set-off against the claim of the plaintiff," * the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Effect of decree as to sum awarded to defendant.

The provisions of this section shall apply, whether the set-off is admissible under section 111 or otherwise.†

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Certified copies of judgment and decree to be furnished.

CHAPTER XVIII.

OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the cost‡ of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Cost of applications.

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 21 (*1*), for the words, "If the defendant has set off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed," as originally enacted.

† This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 21 (*2*).

‡ *Sic*; read "costs."

Act XIV. of 1882.

Judgment to direct by whom costs to be paid.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Power of Court as to costs.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code, and not forming part of a decree, may be executed as if it were a decree for money.

Costs may be set off against sum admitted or found to be due.

221. The Court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Interest on costs.

Payment of costs out of subject-matter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

Court by which decree may be executed.

223. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court—

(*a*) if the person against whom the decree is passed actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree, and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(*d*) if the Court which passed the decree considers, for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may, of its own motion, send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed "in a suit of which the value as set forth in the plaint did not exceed two thousand rupees, and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes,"* and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay, or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay, or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (*a*), (*b*), and (*c*) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself. Act XIV. of 1882.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send—

(*a*) a copy of the decree;

(*b*) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(*c*) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, &c., to file same without proof.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Execution by High Court of decree transmitted by other Court.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court in executing transmitted decree.

Appeal from orders in executing such decrees.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 22, for the words, "in a case cognizable by a Court of Small Causes," as originally enacted.

Act XIV. of 1882.

Decrees of Courts established by Government of India in Native States.

229. A decree of any Court established "or continued"* by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

Sending of decrees of British Indian Courts to British Courts in Native States.

229A.† So much of the foregoing sections of this chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

Execution in British India of decrees of Courts of Native States.

229B.‡ The Governor-General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established "or continued" by the authority of the Governor-General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(*b*) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

B.—Of Application for Execution.

Application for execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or, if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely):—

(*a*) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

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* The words quoted have been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 23.

† S. 229A has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 24.

‡ S. 229B was originally s. 434, but it has been transposed to this place as s. 229B, by the Civil Procedure Code Amendment Act (VII. of 1888), s. 39. The quoted words, "or continued," have been inserted by the same amending Act and section. Any reference made before the commencement of Act VII. of 1888 in any notification or other document to s. 434 shall be read as a reference to s. 229B.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.* Act XIV. of 1882.

Application by joint decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application by transferee of decree.

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree holder:

Provided as follows:—

(*a*) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(*b*) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

Transferee to hold subject to equities enforceable against original holder.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

If judgment-debtor die before execution, application may be made against his representative.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

Contents of application for execution of decree.

235. The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquaint-

* The last paragraph of s. 230, as originally enacted, has been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 25. The repealed paragraph ran as follows: "Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years."

Act XIV. of 1882.

ed with the facts of the case, and shall contain, in a tabular form, the following particulars (namely) :—

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree;

(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;

(*f*) whether any and what previous applications have been made for execution of the decree, and with what result;

(*g*) the amount of the date or compensation with the interest (if any) due upon the decree, or other relief granted thereby;

(*h*) the amount of costs (if any) awarded;

(*i*) the name of the person against whom the enforcement of the decree is sought; and

(*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

Application for attachment of moveable property to be accompanied with inventory.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Further particulars when application is for attachment of immoveable property.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

When application must be accompanied by extract from Collector's register.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

C.—Of Staying Execution.

When Court may stay execution.

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such

Court of first instance or Appellate Court, if execution had been issued thereby, or if application for execution had been made thereto; Act XIV. of 1882.

and, in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

Power to require security from, or impose conditions upon, judgment-debtor.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor discharged to be re-taken.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.

242. Any order of the Court by which the decree was passed, or of such Court of Appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

244. The following questions shall be determined by order of the Court executing a decree, and not by separate suit (namely):—

(*a*) questions regarding the amount of any mesne-profits as to which the decree has directed inquiry;

(*b*) questions regarding the amount of any mesne-profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of decree, or the expiration of three years from the date of the decree;

(*c*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, or to the stay of execution thereof.*

Nothing in this section shall be deemed to bar a separate suit for mesne-profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit, or itself determine the question by an order under this section †

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* This clause has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 26.

† This paragraph has been added by the same Act and section.

Act XIV. of 1882.

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 238, as may be applicable to the case, have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Prohibition of arrest or imprisonment of women in execution of decree for money.

245A.* Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Discretionary power to permit other judgment-debtors to show cause against imprisonment.

245B.* (*1*) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice, and show cause why he should not be committed to jail in execution of the decree.

(*2*) If appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Cross-decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

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* These two sections have been inserted by the Debtors' Act (VI. of 1888), s. 2.

Explanation III.—This section does not apply, unless— Act XIV of 1882.

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and

the sums due under the decrees are definite.

Illustrations.

(*a.*) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(*b.*) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(*c.*) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

Cross-claims under same decree.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him—

(*a*) if more than one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso.

Provided that no such notice shall be necessary—

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure after issue of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

Act XIV. of 1882. If he offers any objection to the enforcement of the decree, the Court shall consider such objection, and pass such order as it thinks fit.

Warrant when to issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall, "subject to the provisions of sections 245A and 245B,"* issue its warrant for the execution of the decree.

Date, signature, seal, and delivery.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Decree against representative of deceased for money to be paid out of deceased's property.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property.

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Decree against surety.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

Decree for money.

254. Every decree or order directing a party to pay money as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

Decree for mesne-profits or other matter, amount of which to be subsequently ascertained.

255. If the decree be for mesne-profits or any other matter, the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

* The words quoted have been inserted by the Debtors' Act (VI. of 1888), s. 3.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits. Act XIV. of 1882.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

257. All money payable under a decree shall be paid as follows (namely):—

Modes of paying money under decree.

(*a*) into the Court whose duty it is to execute the decree; or

(*b*) out of Court to the decree-holder; or

(*c*) otherwise as the Court which made the decree directs.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

Agreement for satisfaction of judgment-debt.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus (if any) shall be recoverable by the judgment-debtor.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

Payment to decree-holder.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.*

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment if necessary.

Decrees for specific moveables, or recovery of wives.

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* This paragraph has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 27.

Act XIV of 1882. When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

Decree for specific performance or restitution of conjugal rights.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of, or abstention from, any other particular act, has been made, has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree, and paid all costs of executing the same, which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

Decree for execution of conveyances, or endorsement of negotiable instruments.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing, stating that his objections (if any) thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing, and argued before the Court; and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section, may be in the following form: "*C D*, Judge of the Court of *(or as the case may be)*, for *A B* in a suit by *E F* against *A B*," or in such other form as the High Court may, from time to time, prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same. Act XIV of 1882.

Form and effect of execution of conveyance by Court.

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Decree for immoveable property.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same, and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Delivery of immoveable property when in occupancy of tenant.

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law (if any) for the time being in force for the partition, or the separate possession of shares, of such estates.

Partition of estate or separation of share.

F.—Of Attachment of Property.

266.* The following property is liable to attachment and sale in execution of a decree (namely), lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property liable to attachment and sale in execution of decree.

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* In Oudh so much of s. 266 as renders land liable to sale in execution of a decree is subject to the following restriction:—

No ancestral property in land shall be sold in satisfaction of a decree without the permission of the Chief Commissioner; no self-acquired property in land shall be so sold without the permission of the Commissioner.

Explanation.—In this section the words "ancestral property" include the immoveable property of persons admitted to engagement for the land-revenue at the summary settlement of 1858-59.—See Act XVIII, of 1876, s. 20, and *supra*, s. 3.

Act XIV. of 1882.

Provided that the following particulars shall not be liable to such attachment or sale (namely):—

(*a*) the necessary wearing apparel "and bedding"* of the judgment-debtor, his wife, and children;

(*b*) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry, and such cattle "and seed-grain"* as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists;

(*d*) books of account;

(*e*) mere rights to sue for damages;

(*f*) any right of personal service;

(*g*) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;

(*h*) the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees monthly;

(ii) twenty rupees monthly where the salary exceeds twenty rupees, and does not exceed forty rupees monthly; and

(iii) one moiety of the salary in any other case;†

(*i*) the pay and allowances of persons to whom the Indian‡ Articles of War apply;

(*j*) the wages of labourers and domestic servants;

(*k*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*l*) a right to future maintenance;

(*m*) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree;§

(*n*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law applicable to him, is exempt from sale for the recovery of an arrear of such revenue.‖

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), "(*j*), and (*m*),"¶ are exempt from attachment or sale, whether before or after they are actually payable:

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 28.

† Cl. *h* has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 28.

‡ In cl. *i* the word "Indian" has been substituted for the word "Native" by Act XII. of 1891.

§ Cl. *m* has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 28.

‖ Cl. *n* has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 28.

¶ The letters and word quoted have been substituted by the same Act and section for the word and letter "and (*j*)."

Provided also that nothing in this section shall be deemed— Act XIV. of 1882.

(*a*) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(*b*) to affect the Army Act, 1881, or any similar law for the time being in force.

Power to summon and examine persons as to property liable to be seized.

267. The Court may, of its own motion, or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment of debt, share, and other property not in possession of judgment-debtor.

268. In the case of (*a*) a debt not secured by a negotiable instrument, (*b*) a share in the capital of any public Company or Corporation, (*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,—

(*a*) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(*b*) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(*c*) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor; in the case of the share, to the proper officer of the Company or Corporation; and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (*a*) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order, requiring the officer whose duty it is to disburse the salary to withhold, every month, such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house, and shall be served on the officer so required.

Every such officer may, from time to time, pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

Attachment of moveable property in possession of judgment-debtor.

269. If the property be moveable property in the possession of the judgment debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Act XIV. of 1882.

Proviso. Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Power to make rules for maintenance of attached live-stock. The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment of negotiable instruments. **270.** If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court, and held subject to the further orders of the Court.

Seizure of property in building. **271.** No person executing any process under this Code, directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Seizure of property in zanánas. Provided that, if the room be in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of property deposited in Court or with Government officer. **272.** If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Proviso. Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

Attachment of decree for money. **273.** If the property be a decree for money passed by the Court, which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court, under the hand of the Judge of the Court which passed the decree sought to be executed,

requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until Act XIV of 1882.

(*a*) the Court which passed the decree sought to be executed cancels the notice, or

(*b*) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree, and apply the proceeds in satisfaction of the decree sought to be executed.

Attachment of other decrees.

In the case of all other decrees, the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders to give information.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment of immoveable property.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

Order for withdrawal of attachment after satisfaction of decree.

275. If the amount decreed with costs, and all charges and expenses resulting from the attachment of any property, be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private alienation of property after attachment to be void.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void against all claims enforceable under the attachment.

Court may direct coin or currency-notes attached to be paid to party entitled.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Act XIV. of 1882.

Investigation of claims to, and objections to attachment of, attached property.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant.

279. The claimant or objector must adduce evidence, to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment.

280. If, upon the said investigation, the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of, or in trust for, some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent, as it thinks fit, from attachment.

Disallowance of claim to release of property attached.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Saving of suits to establish right to attached property.

283. The party against whom an order under section 280, 281, or 282, is passed, may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit (if any), the order shall be conclusive.

Power to order property attached to be sold, and proceeds to be paid to person entitled.

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Property attached in execution of decrees of several Courts.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto, and any ob-

jection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached. Act XIV. of 1882.

G.—Of Sale and Delivery of Property.

(a) General Rules.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

Sales by whom conducted, and how made.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

Proclamation of sales by public auction.

(*a*) the property to be sold;

(*b*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;

(*c*) any incumbrance to which the property is liable;

(*d*) the amount for the recovery of which the sale is ordered; and

(*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Rules to be made by High Court.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

288. No Judge or other public officer shall be answerable for any error, misstatement, or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Indemnity of Judges, &c.

289. The proclamation shall be made in manner prescribed by section 274.....,* and a copy thereof shall then be fixed up in the Court-house, and, in the case of land paying revenue to Government, also in the Collector's office.

Mode of making proclamation.

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* Here the words, "on the spot where the property is attached," have been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 29.

Act XIV of 1882.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Time of sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

Power to adjourn sale.

291. The Court may, in its discretion, adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment: Provided that, when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Stoppage of sale on tender of debt and costs, or on proof of payment.

Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Officers concerned in execution-sales not to bid for or buy property sold.

292. No officer having any duty to perform in connection with any sale under this chapter shall, either directly or indirectly, bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

Defaulting purchaser answerable for loss by re-sale.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

Decree-holder not to bid for or buy property without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

If decree-holder purchase, amount of decree may be taken as payment.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Proceeds of execution-sale to be divided rateably among decree-holders.

Provided as follows:—

(*a*) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

Proviso where property is sold subject to mortgage.

(*b*) when any property* liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(*c*) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal money due on the incumbrance;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(*b*) *Rules as to Moveable Property.*

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

Rules as to negotiable instruments, and shares in public Companies.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

Payment for other moveable property sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

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* The word "is" in s. 295, cl. *b*, has here been omitted.—*See Gazette of India*, Aug. 19, 1882, Pt. I., p. 355.

Act XIV. of 1882.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property, and for compensation in default of such recovery.

Delivery of moveable property actually seized.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of moveable property to which judgment-debtor entitled subject to lien.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of debts and of shares in public Companies.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect: "*A B*, by *C D*, Judge of the Court of (*or as the case may be*); in a suit by *E F* against *A B*."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

Vesting order in case of other property.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(*c*) *Rules as to Immoveable Property.*

What Courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount. Act XIV. of 1882.

Postponement of sale of land to enable defendant to raise amount of decree.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease, or sale: provided that all moneys payable under such mortgage, lease, or sale, shall be paid into Court, and not to the judgment-debtor:

Certificate to judgment-debtor.

Provided also that no mortgage, lease, or sale under this section, shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

Deposit by purchaser of immoveable property.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

Time for payment in full.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale of immoveable property.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

310A.* Any person whose immoveable property has been sold under this chapter may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in Court—

Application by judgment-debtor to set aside sale on deposit of debt.

* S. 310A has been added by Act V. of 1894, s. 2.

Act XIV. of 1882.

(*a*) for payment to the purchaser, a sum equal to five per centum of the purchase-money, and

(*b*) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale:

Provided that, if a person applies, under the next following section, to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section.

Nothing in this section shall be construed to relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Application to set aside sale of land on ground of irregularity.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

Effect of objection being disallowed, and

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

of its being allowed.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

Application to set aside sale on ground of judgment-debtor having no saleable interest.

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: Provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Confirmation of sale.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is, for that reason, deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money. Act XIV of 1882.

Certificate to purchaser of immoveable property.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate, and not before: Provided that the decree under which the sale took place was still subsisting at that date.

Bar to suit against purchaser buying benami.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of immoveable property in occupancy of judgment-debtor.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of immoveable property in occupancy of tenant.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant, by beat of drum, or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Power to prescribe rules for transferring to Collector execution of certain decrees.

320. The Local Government may, with the sanction of the Governor-General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to prescribe rules as to transmission, execution, and re-transmission of decrees.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

Act XIV. of 1882.

Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to, and revision by, superior Revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.*

A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.*

In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII. of 1850 (*an Act for the protection of Judicial Officers*).*

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

(*a*) proceed as the Court would proceed under section 305; or

(*b*) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(*c*) sell the property ordered to be sold, or so much thereof as may be necessary.

Procedure of Collector when execution of decree is so transferred.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(*a*) every person holding a decree for money against the judgment-debtor capable of execution by a sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

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* These three paragraphs have been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 30.

(*b*) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced. Act XIV of 1882.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the Court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of money-decrees to be ascertained and immoveable property available for their satisfaction.

322B. Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

When District Court may issue notices and hold inquiry.

322C.* The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property, so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the enquiry, and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of decision of Court as to dispute arising under section 322B or 322C.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as a decree.

Scheme for liquidation of money-decrees.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

* Under the Bengal, N.-W. P., and Assam Civil Courts Act, 1887, the High Court has power to authorize Subordinate Judges and Munsifs to take cognizance of references by Collectors under s. 322C.—See Act XII. of 1887, s. 23 (*2*) (*e*).

Act XIV. of 1882.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale;

(2) raise such amount and interest (notwithstanding any order under section 304)—

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by selling part of such property; or

(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(*e*) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section, the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules, consistent with this Act, as may, from time to time, be made in this behalf by the Chief Controlling Revenue Authority.

Recovery of balance (if any) after letting or management.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to render accounts to Civil Court.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all moneys which come to his hands, and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him. Act XIV. of 1882.

Application of balance.

Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue (if any) shall be paid to the judgment-debtor or such other person (if any) as the Court directs.

325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

Sales how to be conducted.

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(*c*) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

Act XIV. of 1882.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

Provision where property is in several districts.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may, by general rule or special order, direct.

Powers of Collector to compel attendance of parties and witnesses and production of documents.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

When Court may authorize Collector to stay public sale of land.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive), shall apply, as far as they are applicable.

Local rules as to sales of land in execution of decrees for money.

327. The Local Government may, from time to time, with the sanction of the Governor-General in Council, make special rules for any local area, imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value;

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.—Of Resistance to Execution.

Procedure in case of obstruction to execution of decree.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor, or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

Procedure in case of obstruction by judgment-debtor or at his instigation.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable under the Indian Penal Code or any other law for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Procedure when obstruction continues.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder, plaintiff and the claimant as defendant;

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V.,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and, if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and, if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

Act XIV. of 1882.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be final.

Transfer of property by judgment-debtor after institution of suit.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Resisting or obstructing purchaser in obtaining possession of immoveable property.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

Obstruction by claimant other than judgment-debtor.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed shall inquire into the matter of the resistance, obstruction, or dispossession, as the case may be and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be final.

I.—Of Arrest and Imprisonment.

Place of judgment-debtor's imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Proviso.

Provided as follows:—

(*a*) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest, has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: Provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

(*b*) when the decree in execution of which a judgment-debtor is arrested is a decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX. to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court. Act XIV. of 1882.

If, after such publication, the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will, within one month, apply under section 344 to be declared an insolvent, the Court shall release him from arrest;

But if he fails so to apply, the Court may either direct the security to be realized, or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Warrant for arrest to direct judgment-debtor to be brought up.

337A.* (*1*) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

Proceedings on appearance of judgment-debtor in obedience to notice under section 245B, or after arrest in execution of decree for money.

(*2*) Before making an order under sub-section (*1*), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely :—

(*a*) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account ;

(*b*) the transfer, concealment, or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;

(*c*) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors ;

(*d*) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it ;

* This section has been inserted by the Debtors' Act (VI. of 1888), s. 4.

Act XIV. of 1882.

(*e*) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (*b*) of this sub-section.

(*3*) While any of the matters mentioned in the sub-section (*2*) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

(*4*) A judgment-debtor released under this section may be re-arrested.

(*5*) If the Court does not make such an order as is mentioned in sub-section (*1*), it shall cause the judgment-debtor to be arrested if he has not already been arrested, and, subject to the other provisions of this Code, commit him to jail.

Scales of subsistence-allowances.

338. The Local Government may, from time to time, prescribe scales graduated according to rank, race, and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Judgment-debtor's subsistence-money.

339. No judgment-debtor shall be arrested in execution of a decree, unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

Subsistence-money to be costs in suit.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit :

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Release of judgment debtor.

341. The judgment-debtor shall be discharged from jail—

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail ; or

(*b*) on the decree being otherwise fully satisfied ; or

(*c*) at the request of the person on whose application he has been imprisoned ; or

(*d*) on such person omitting to pay the allowance as hereinbefore directed ; or

(*e*) if the judgment-debtor be declared an insolvent, as hereinafter provided; or Act XIV. of 1882.

(*f*) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second, third, and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed six months.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

When not to exceed six weeks.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

Endorsement on warrant.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability; and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

Power to apply for declaration of insolvency.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application.

345. The application, when made by the judgment-debtor, shall set forth—

(*a*) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(*b*) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(*c*) the place or places in which such property is to be found;

(*d*) his willingness to put it at the disposal of the Court;

Act XIV. of 1882.

(*e*) the amount and particulars of all pecuniary claims against him ; and

(*f*) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Subscription and verification of application.

346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

Service of copy of application and notice.

347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court, and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application :

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section, if satisfied that he is unable to make them.

Power to serve other creditors.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

Powers of Court as to judgment-debtor under arrest.

349. Where the judgment-debtor "is in custody under the foregoing provisions of this Code,"* the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

Procedure at hearing.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 31, for the words, "is under arrest," as originally enacted.

Declaration of insolvency and appointment of Receiver.

351. If the Court is satisfied—

(*a*) that the statements in the application are substantially true ;

(*b*) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time ;

(*c*) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts, or given an unfair preference to any of his creditors by any payment or disposition of his property;

(*d*) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or, if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

Creditors to prove their debts.

Schedule to be framed.

352. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him ; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts ; and shall frame a schedule of such persons and debts ; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the Court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Applications by unscheduled creditors.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

Act XIV. of 1882.

354. Every order under section 351 shall be published in the local official Gazette, and "every order under that section appointing a Receiver" * shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

Effect of order appointing Receiver.

355. The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid;

Receiver to give security and collect assets.

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Discharge of insolvent.

356. The Receiver shall proceed under the direction of the Court—

Duty of Receiver.

(*a*) to convert the property into money;

(*b*) to pay thereout debts, fines, and penalties (if any) due by the insolvent to Government;

(*c*) to pay the said decree-holder's costs;

(*d*) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property;

(*e*) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference:

and such Receiver may retain, as a remuneration for the performance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his legal representative:

His right to remuneration.

Delivery of surplus.

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government, or held or let for agricultural purposes, shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (*a*) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (*b*) the immoveable property of the insolvent remaining unsold, and (*c*) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 (both inclusive) as he thinks fit, and subject to the provisions of those sections, so far as they may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the schedule-debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266, and except the property

Effect of discharge.

* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 31.

vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355. Act XIV. of 1882.

Declaration that insolvent is discharged from liability.

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent, discharged as aforesaid, absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has—

(*a*) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(*b*) fraudulently concealed, transferred, or removed any property; or

(*c*) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him, by order in writing, to imprisonment for a term which may extend to one year from the date of committal;

or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

Investment of other Courts with powers of District Courts.

Transfer of cases.

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district, and so invested, any case instituted under section 344.

A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court.*

Inapplicability of this chapter to Presidency-towns.

360A.† Nothing in this chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras, or Bombay.

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* This paragraph has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 31. The third (or last) paragraph of this section has been repealed by Act XIV. of 1885, s. 3.

† This section has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 31.

Act XIV. of 1882.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survives.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Illustrations.

(*a.*) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. The right to sue survives to C, and the suit does not abate.

(*b.*) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(*c.*) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(*d.*) A, a member of a Hindu joint family under the Mitakshara law, institutes a suit for partition of the family-property. A dies, leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survives.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure where one of several plaintiffs dies, and right to sue does not survive to surviving plaintiffs alone.

363.* If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative (if any) of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record, and proceed with the suit.

Procedure in case of death of sole, or sole surviving, plaintiff.

365 † In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.

Abatement where no application by representative of deceased plaintiff.

366. If, within the time limited by law, no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may

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* S. 363 has been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 32, for ss. 363 and 364 as originally enacted.

† S. 365 has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 32.

have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff; Act XIV. of 1882.

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

Procedure in case of dispute as to representative of deceased plaintiff.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Procedure in case of death of one of several defendants,

or of sole, or sole surviving, defendant.

368. If there be more defendants than one, and any of them die before decree, and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.*

Suit not abated by marriage of female party.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

* This paragraph has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 32.

Act XIV. of 1882.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's bankruptcy or insolvency bars suit.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

Procedure when assignee fails to continue suit or give security.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

Application to set aside abatement or dismissal.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Procedure in case of assignment pending suit.

372. In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections (if any), be continued by or against the person to whom such interest has come either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

Power for Court to extend period of limitation prescribed for certain applications.

372A.* The provisions of section 5 of the Indian Limitation Act, 1877, applicable to appeals, shall apply to applications under sections 365, 366, 368, and 371.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

373. If, at any time after the institution of the suit, the Court is satisfied, on the application of the plaintiff, (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit, or to abandon part of his claim with liberty to

* S. 372A has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 32 (*4*).

bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit. Act XIV. of 1882.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation-law not affected by first suits.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

Compromise of suit.

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise, or satisfaction, shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise, or satisfaction.

Applications for execution of decrees not affected.

375A.* Nothing in this chapter shall apply to any application or other proceeding in any suit subsequent to the decree.

Explanation.—An application to the Appellate Court pending an appeal is not an application subsequent to the decree appealed from within the meaning of this section.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

Deposit by defendant of amount in satisfaction of claim.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Procedure where plaintiff accepts deposit as satisfaction in part.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's

* S. 375A has been added to Ch. XXII. by Act VI. of 1892, s. 2.

Act XIV. of 1882.

claim, the plaintiff must pay the costs of the suit incurred after the deposit, and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed, and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(*a*.) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*.) B sues A under the circumstances mentioned in illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(*c*.) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

When security for costs may be required from plaintiff at any stage of suit.

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

On the application of any defendant in a suit for money in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.*

Effect of failure to furnish security.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373,

"or show good cause why such time should be extended, in which case the Court may extend it.

"Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing

* This clause has been added by the Debtors' Act (VI. of 1888), s. 5.

the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. Act XIV. of 1882.

"The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

"The provisions of the Indian Limitation Act, 1877, with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application shall apply so far as they can be made applicable to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application, respectively."*

Residence out of British India.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

Cases in which Court may issue commission to examine witness.

383. Any Court may, in any suit, issue a commission for the examination, on interrogatories or otherwise, of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are, from sickness or infirmity, unable to attend it.

Order for commission.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit, or of the witness to be examined.

When witness resides within Court's jurisdiction.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose examination commission may issue.

386. Any Court may, in any suit, issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(*c*) civil and military officers of Government, who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon within the local limits of whose jurisdiction such person resides, "or to any pleader or other person whom the

* In s. 381, the clauses quoted have been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 33.

Act XIV. of 1882. Court issuing the commision may, subject to any rules of the High Court in this behalf, thinks fit to appoint."*

The Court, on issuing any commission under this section, shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission to examine witness not within British India.

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return of commission with depositions of witnesses.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(*a*) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable, from sickness or infirmity, to attend to be personally examined, or exempted from personal appearance in Court, or

(*b*) the Court, in its discretion, dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(*a*) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or

(*b*) Courts situate in any part of the British Empire other than British India, or

(*c*) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for local Investigations.

Commission to make local investigations.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne-profits or damages or annual nett profits, and the same cannot be conveniently conducted

* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 34, for the words, "or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint," as originally enacted.

by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court: Act XIV. of 1882.

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Procedure of Commissioner.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing, signed with his name, to the Court.

Report and depositions to be evidence in suit.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit, and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Commissioner may be examined in person.

C.—Commissions to examine Accounts.

Commission to examine or adjust accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

Court to give Commissioner necessary instructions.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

Court to receive Commissioner's proceedings or direct further inquiry.

The proceedings of the Commissioner shall be received in evidence in the suit unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

D.—Commission to make Partition.

Commission to make partition of non-revenue-paying immoveable property.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Procedure of Commissioners.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such re-

Act XIV of 1882.

port or reports shall be annexed to the commission, and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

E.—General Provisions.

Expenses of commission to be paid into Court.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of enquiry;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance, examination, and punishment of witnesses before Commissioner.

399. The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

Court to direct parties to appear before Commissioner.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Procedure *ex parte*.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

Suits may be brought *in formâ pauperis*.

401. Subject to the following rules, any suit may be brought by a pauper.

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in

such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit. Act XIV of 1882.

What suits excepted.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language, or assault.

Application to be in writing. Contents of application.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Presentation of application.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Rejection of application.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

Examination of applicant.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

Rejection of application.

407. If it appear to the Court—

(*a*) that the applicant is not a pauper, or

(*b*) that he has, within the two months next before the presentation of the application, disposed of any property, fraudulently or with a view to obtain the benefit of this chapter, or

(*c*) that his allegations do not show a right to sue in such Court, or

(*d*) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application.

Notice of day for receiving evidence of applicant's pauperism.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government

Act XIV. of 1882. Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Procedure at hearing.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant, or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

Procedure if application admitted.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V., except that the plaintiff shall not be liable to any Court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

Costs when pauper succeeds.

Recovery of Court-fees.

411. If the plaintiff succeed in the suit the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

Procedure when pauper fails.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

Dispaupering.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(*a*) if he is guilty of vexatious or improper conduct in the course of the suit;

(*b*) if it appears that his means are such that he ought not to continue to sue as a pauper; or

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(*c*) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

Costs.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Suits by or against Secretary of State in Council.

417. Persons being, *ex officio* or otherwise, authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of Government.

Persons authorized to act for Government.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Plaints in suits by Secretary of State in Council.

419. The Government Pleader in any Court, "or such other person as the Local Government may for any Court appoint in this behalf,"* shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

Agent for Government to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officers.

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 35.

Act XIV. of 1882.

Extension of time to enable officer to make reference to Government.

423. If the public officer, on receiving the summons, considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

and the Court, upon such application, may extend the time for so long as appears to be requisite.

Notice previous to suing Secretary of State in Council or public officer.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, and the name and place of abode of the intending plaintiff "and the relief which he claims;"* and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in such suits

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Application where Government undertakes defence.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court; and upon such application the Court shall cause a note of his authority to be entered in the register.

Procedure where no such application made.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Defendant not liable to arrest before judgment.

Exemption of public officers from personal appearance.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Procedure where decree against Government or public officer.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII of 1888), s. 36.

CHAPTER XXVIII.

Act XIV. of 1882.

SUITS BY ALIENS, AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

When aliens may sue.

430. Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue.

431. A foreign State may sue in the Courts of British India, provided that—

(*a*) it has been recognized by Her Majesty or the Governor-General in Council, and

(*b*) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

432. Persons specially appointed by order of Government at the request of any Sovereign, Prince, or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, "or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief,"* to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of such Prince or Chief.

An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may, from time to time, be necessary to prosecute or defend on behalf of the Prince or Chief.*

A person appointed under this section may authorize or appoint persons to make and do appearances, applications, and acts in any such suit or suits as if he were himself a party to the suit or suits.*

Suits against Princes, Chiefs, Ambassadors, and Envoys.

433.† (*1*) Any such Prince or Chief, and any Ambassador or Envoy of foreign State, may, with the consent of the Governor-General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent) be sued in any competent Court.

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* The words quoted have been inserted, and the second and third paragraphs have been added, by the Civil Procedure Code Amendment Act (VII. of 1888), s. 37.

† This section has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 38.

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(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, Ambassador, or Envoy may be sued; but it shall not be given unless the Prince, Chief, Ambassador, or Envoy—

(*a*) has instituted a suit in the Court against the person desiring to sue him, or

(*b*) by himself or another trades within the local limits of the jurisdiction of the Court, or

(*c*) is in possession of immoveable property situate within those limits, and is to be sued with reference to such possession or for money charged on that property.

(3) No such Prince, Chief, Ambassador, or Envoy, shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, Ambassador, or Envoy.

(4) The Governor-General in Council may, by notification in the *Gazette of India*, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, Ambassador, or Envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor-General in Council and a Secretary to the Government of India respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, Ambassador, or Envoy from whom he holds, or claims to hold, the property.

Style of Princes and Chiefs as parties to suits.

434.* A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State:

Provided that, in giving the consent referred to in the last foregoing section, the Governor-General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

Subscription and verification of plaint.

435. In suits by a Corporation or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company, by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Service on Corporation or Company.

436. When the suit is against a Corporation or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

* This is a new section, substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 40. The original section (434) has been transposed as s. 229B by s. 39 of the same Amendment Act. Any reference made before the commencement of Act VII. of 1888 in any notification or other document to s. 434 shall be read as a reference to s. 229B.—See s. 39 of Act VII. of 1888.

(*a*) by leaving it at the registered office (if any) of the Corporation or Company, or

(*b*) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(*c*) by giving it to any director, secretary, or other principal officer of the Corporation or Company;

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

Representation of beneficiaries in suits concerning property vested in trustees, &c.

437. In all suits concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of executors and administrators.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of married executrix not to join.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must sue by next friend. Costs.

440. Every suit by a minor shall be instituted in his name by an adult person, who, in such suit, shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian, and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.*

* In s. 440, the second paragraph has been added by the Guardians and Wards Act (VIII. of 1890), s. 53.

Act XIV. of 1882.

Applications to be made by next friend or guardian *ad litem*.

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend or his guardian for the suit.

Plaint filed without next friend to be taken off file. Costs.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

Guardian *ad litem* to be appointed by Court.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.*

Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him, or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.†

Order obtained without next friend or guardian may be discharged. Costs.

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Who may be next friend.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Removal of next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next

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* In s. 443, the second paragraph, as originally enacted, has been repealed by the schedule to the Guardians and Wards Act (VIII. of 1890), and has therefore been omitted. The repealed paragraph was as follows: "A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3."

† In s. 443, this last paragraph has been added by s. 53 of the Guardians and Wards Act (VIII. of 1890).

friend, the Court shall remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor.* Act XIV. of 1882.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Retirement of next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Application for appointment of new next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceedings on death or removal of next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Application for appointment of new next friend.

450. A minor plaintiff, or a minor not a party to a suit, on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on coming of age.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Where he elects to proceed.

The title of the suit or application shall, in such case, be corrected so as to read thenceforth thus :—

"*A B*, late a minor by *C D*, his next friend, but now of full age."

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Where he elects to abandon.

Costs.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

Making and proving applications under sections 451, 452.

454. A minor co-plaintiff, on coming of age, and desiring to repudiate the suit, must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

When minor co-plaintiff coming of age desires to repudiate suit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The

Costs.

* In s. 446, the second paragraph has been added by the Guardians and Wards Act (VIII. of 1890), s. 53.

Act XIV. of 1882.

costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

When suit unreasonable or improper.

455. If any minor, on attaining majority, can prove, to the satisfaction of the Court, that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

Petition for appointment of guardian *ad litem*.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name, and on behalf, of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor.

Who may be guardian *ad litem*.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

Guardian neglecting his duty may be removed.

Costs.

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Appointment in place of guardian dying *pendente lite*.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Guardian *ad litem* of minor representative of deceased judgment-debtor.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Receipt by next friend or guardian *ad litem* of property under decree for minor.

461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability

known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.* Act XIV. of 1882.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Next friend or guardian *ad litem* not to compromise without leave of Court.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Compromise without leave voidable.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV. of 1858, or under any other law for the time being in force.

Application of sections 440 to 462 to persons of unsound mind.

464. Nothing in this chapter applies to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued, by direction of the Governor-General in Council or a Local Government, in the name of an agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.†

Princes and Chiefs and wards of Court.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

The authority shall be in writing, and shall be signed by the officer or soldier in the presence of (*a*) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (*b*) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment, or depôt to which the officer or soldier belongs.

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* S. 461 has been substituted by the Guardians and Wards Act (VIII. of 1890), s. 53.

† S. 464 has been substituted for the original section as amended by s. 41 of the Civil Procedure Code Amendment Act (VII. of 1888).—See Guardians and Wards Act (VIII. of 1890), s. 53.

Act XIV. of 1882.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint pleader.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Service on person so authorized or on his pleader, to be good service.

468. When,* a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

Service on officers and soldiers.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If, from any cause, the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. [*Repealed by the Cantonments Act (XIII. of 1889), s. 2 and sch.*]

CHAPTER XXXIII.

INTERPLEADER.

470. When two or more persons claim, adversely to one another, the same payment or property from another person whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

When interpleader-suit may be instituted.

Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

471. In every suit of interpleader the plaint must, in addition to the other statements necessary for plaints, state—

Plaint in such suit.

(*a*) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Payment of thing claimed into Court.

* Here the words "an officer or" have been omitted, having been repealed by the Cantonments Act (XIII. of 1889), s. 2 and sch.

Procedure at first hearing.

473. At the first hearing the Court may— Act XIV. of 1882.

(*a*) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit;

or, if it thinks that justice or convenience so require,

(*b*) retain all parties until the final disposal of the suit;

and, if it finds that the admissions of the parties or other evidence enable it,

(*c*) adjudicate the title to the thing claimed; or else it may

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

When agents and tenants may institute interpleader-suits.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(*a*.) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader suit against A and C.

(*b*.) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge of plaintiff's costs.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure where defendant is suing stakeholder.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

When plaintiff may apply that security be taken.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

Act XIV. of 1882.

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of, or removed from the jurisdiction of the Court, his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of, or removed from the jurisdiction of the Court, his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant, and bring him before the Court to show cause why he should not give security for his appearance.

If defendant fail to show cause, Court may order him to make deposit or give security.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees : **Act XIV. of 1882.**

Procedure where defendant fails to give security or find fresh security.

Provided that no person shall be detained in prison under this section after he has complied with such order.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

Subsistence of defendants arrested.

B.—Attachment before judgment.

483. If at any stage of any suit, the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

Application before judgment for security from defendant to satisfy decree, and, in default, for attachment of property.

(*a*) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(*b*) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, specify the property required to be attached, and the estimated value thereof.

Contents of application.

484. If the Court, after examining the applicant, and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same,* or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

Court may call on defendant to furnish security or show cause.

The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property specified in the application.

* In s. 484, the word "same" has been substituted for the word "sum" by Act XII. of 1891.

Act XIV. of 1882.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

Attachment if cause not shown or security not furnished.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

Mode of making attachment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Property attached under chapter not to be re-attached in execution of decree.

C.—Compensation for improper Arrests or Attachments.

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

Compensation for obtaining arrest or attachment on insufficient grounds.

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment;

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

Act XIV. of 1882.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

Cases in which temporary injunction may be granted.

492. If in any suit it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(*b*) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may, by order, grant a temporary injunction to restrain such act, or give such other order, for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property, as the Court thinks fit, or refuse such injunction or other order.

Injunction to restrain repetition or continuance of breach.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time, after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may, by order, grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds, the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance (if any) to the defendant.

Before granting injunction, Court to direct notice to opposite party.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Injunction to corporation binding on its members and officers.

495. An injunction directed to a Corporation or public Company is binding, not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Order for injunction may be discharged, varied, or set aside.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Compensation to defendant for issue of injunction on insufficient grounds.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant, for the expense or injury caused to him by the issue of the injunction:

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

Power to order interim sale of perishable articles.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner, and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to make order for detention, &c., of subject-matter, and to authorize entry, taking of samples, and experiments.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(*a*) make an order for the detention, preservation, or inspection of any property being the subject of such suit;

(*b*) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(*c*) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

Applications for such orders to be after notice.

500. An application by the plaintiff for an order, under section 498 or section 499, may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

When party may be put in immediate possession of land the subject of suit.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently

ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure; Act XIV. of 1882.

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Deposit of money, &c., in Court.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

503. Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may, by order—

Power of Court to appoint Receivers.

(*a*) appoint a Receiver of such property,

and if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(*c*) commit the same to the custody or management of such Receiver; and

(*d*) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration "as the Court thinks fit,"* and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receiver's liabilities.

Every Receiver so appointed shall—

(*e*) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(*f*) pass his accounts at such periods and in such form as the Court directs;

(*g*) pay the balance due from him thereon as the Court directs; and

(*h*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in the section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 42.

Act XIV. of 1882.

When Collector may be appointed Receiver.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, "the Court may, with the consent of the Collector, appoint him,"* to be receiver of such property.

Courts empowered under this chapter.

505. The powers conferred by this chapter shall be exercised only by High Courts and District Courts: Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

Parties to suit may apply for order of reference.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply in person, or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing, and shall state the particular matter sought to be referred.

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

When Court to nominate arbitrator.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

Order of reference.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

When reference is to two or more, order to provide for difference of opinion.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

(*a*) by the appointment of an umpire, or

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*The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 43, for the words, "the Court may appoint the Collector."

(*b*) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or Act XIV of 1882.

(*c*) by empowering the arbitrators to appoint an umpire, or

(*d*) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

Death, incapacity, &c., of arbitrators or umpire.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may, in its discretion, either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Appointment of umpire by Court.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire, and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of arbitrator or umpire appointed under sections 509, 510, 511.

512. Every arbitrator or umpire appointed under section 509, section 510, or section 511, shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment for default, &c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court, on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

Supersession of arbitration.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

(*a*) if they have allowed the appointed time to expire without making an award, or

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(*b*) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

Award to be signed and filed.

516. When an award in a suit has been made, the persons who made it shall sign it, and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Arbitrators or umpire may state special case.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to, and form part of, the award.

Court may, on application modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award—

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Orders as to costs of arbitration.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

When award or matter referred to arbitration may be remitted.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(*b*) where the award is so indefinite as to be incapable of execution;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely):—

(*a*) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

Act XIV. of 1882.

Judgment to be according to award.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

Upon the judgment so given, a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Agreement to refer to arbitration may be filed in Court.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement, or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

Application to be numbered and registered.

The application shall be in writing, and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Notice to show cause against filing.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein, and the parties cannot agree as to the nomination.

Provisions of chapter applicable to proceedings under order of reference.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Filing award in matter referred to arbitration without intervention of Court.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court.

Application to be numbered and registered.

The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

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Notice to parties to arbitration.

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

526. If no ground, such as is mentioned or referred to in section 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

Power to state case for Court's opinion.

527. Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing, stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(*a*) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(*b*) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

When value of subject-matter must be stated.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and numbered as suit.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of case.

531. The case shall be set down for hearing as a suit instituted under Chapter V., the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(*a*) that the agreement was duly executed by them, and

(*b*) that they have a *bonâ fide* interest in the question stated therein, and

(*c*) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

Institution of summary suits upon bills of exchange, &c.

532. In any Court to which this section applies, all suits upon bills of exchange, hundis, or promissory notes, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may, from time to time, prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit, unless he obtains leave from a Judge, as hereinafter mentioned, so to appear and defend;

and in default of his obtaining such leave, or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Payment into Court of sum mentioned in summons.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover.

Defendant showing defence on merits to have leave to appear.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree.

534. After decree, the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Act XIV. of 1882.

Power to order bill, &c., to be deposited with officer of Court.

535. In any proceeding under this chapter the Court may order the bill, hundi, or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Procedure in suits under chapter.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

Application of chapter.

538. Sections 532 to 537 (both inclusive) apply only to—

(*a*) the High Courts of Judicature at Fort William, Madras, and Bombay;

(*b*) the Court of the Recorder of Rangoon;

(*c*) the Courts of Small Causes in Calcutta, Madras, and Bombay;

(*d*) the Court of the Judge of Karachi; and

(*e*) any other Court having ordinary original civil jurisdiction, to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

When suits relating to public charities may be brought.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, acting *ex officio*, or two or more persons "having an interest"* in the trust, and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

(*a*) appointing new trustees under the trust;

(*b*) vesting any property in the trustees under the trust;

* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 44, for the words, "having a direct interest."

(*c*) declaring the proportions in which its objects are entitled;

(*d*) authorizing the whole or any part of its property to be let, sold, mortgaged, or exchanged;

(*e*) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.*

PART VI.

OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

Appeal to lie from all original decrees, except when expressly prohibited.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

An appeal may lie, under this section, from an original decree passed *ex parte*.†

Form of appeal.

What to accompany memorandum.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection; but the Court, in deciding the appeal, shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

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* The last paragraph of s. 539, as originally enacted, namely, "Act No. X. of 1840, section 2, is hereby repealed," has been repealed by Act XII. of 1891.

† This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 45.

Act XIV. of 1882.

Rejection or amendment of memorandum.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there.

When the Court rejects, under this section, any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

Of staying and executing Decrees under Appeal.

Execution of decree not stayed solely by reason of appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause, order the execution to be stayed.

Stay of execution of appealable decree before time for appealing has expired.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may, for sufficient cause, order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made;

(*b*) that the application has been made without unreasonable delay; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Security in case of order for execution of decree appealed against.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may, for like cause, direct the Court, which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

No such security to be required from Government or public officers.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity. Act XIV. of 1882.

Of Procedure in Appeal from Decrees.

Registry of memorandum of appeal.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.

Such book shall be called the Register of Appeals.

Appellate Court may require appellant to give security for costs.

549. The Appellate Court may, at its discretion, either before the respondent is called upon to appear and answer, or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

When appellant resides out of British India.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant.*

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

Transmission of papers to Appellate Court.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree appealed against.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Power to dismiss appeal without sending notice to lower Court.

551.† (*1*) The Appellate Court, if it thinks fit, may, after fixing a day for hearing the appellant or his pleader, and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made, and without serving notice on the respondent or his pleader.

* This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 46.

† This section has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 47.

Act XIV. of 1882.

(2) If on the day fixed under sub-section (1) or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

(3) The dismissal of an appeal, under this section, shall be notified to the Court against whose decree the appeal is made.

Day for hearing appeal.

552. Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal.*

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Publication and service of notice of day for hearing appeal.

553. Notice of the day so fixed shall be stuck up in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI. for the service on a defendant of a summons to appear and answer, and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

Contents of notice.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

Right to begin.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal of appeal for appellant's default.

556. If, on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Hearing appeal *ex parte*.

If the appellant attends, and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

557. If, on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

* This paragraph has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 47.

Proviso.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if, on the day fixed for hearing the appeal, the respondent appears in person, or by a pleader, or by a duly authorized agent.

Re-admission of appeal dismissed for default.

558. If an appeal be dismissed under "section 551, sub-section (2),"* section 556, or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Re hearing on application of respondent against whom *ex parte* decree made.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

561. Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal; "provided he has filed the objection in the Appellate Court within one month from the date of the service on him or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."†

Form of notice, and provisions applicable thereto.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent.‡

The provisions of Chapter XLIV. shall, so far as they can be made applicable, apply to an objection under this section‡.

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 47.

† This proviso has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 48.

‡ These two paragraphs have been added by the same Act and section.

Act XIV. of 1882.

562 If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point,* and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to readmit the suit under its original number in the register, and proceed to "determine"† the suit on the merits.

Remand of case by Appellate Court.

The Appellate Court may, if it thinks fit, direct that issue or issues shall be tried in any case so remanded.

563. [*Repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 50.*]

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

Limit to remand.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court "may,"‡ after re-settling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

When evidence on record sufficient, Appellate Court may determine case finally.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits,§ the Appellate Court may, "if necessary,"‖ frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required;

When Appellate Court may frame issues, and refer them for trial to Court whose decree appealed against.

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon, together with the evidence.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

Finding and evidence to be put on record.
Objections to finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

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* Here the words originally enacted, "so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties," have been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 49.

† The word "determine" has been substituted for the word "investigate" by the same Act and section.

‡ This word has been substituted for the word "shall" by the Civil Procedure Code Amendment Act (VII of 1888), s. 51.

§ Here the words, "and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issues or question," have been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 52.

‖ The words quoted have been inserted by the same Act and section.

Act XIV of 1882.

Production of additional evidence in Appellate Court.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(*a*) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(*b*) the Appellate Court requires any document to be produced or* any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

Mode of taking additional evidence.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence, and to send it, when taken, to the Appellate Court.

Points to be defined and recorded.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal:

Judgment when and where pronounced.

571. The Appellate Court, after hearing the parties or their pleaders, and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Language of judgment.

572. The judgment shall be written in English ; provided that, if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Translation of judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Contents of judgment.

574. The judgment of the Appellate Court shall state—

(*a*) the points for determination ;

(*b*) the decision thereupon ;

(*c*) the reasons for the decision ; and,

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* The word " or " has been substituted for the word " for " by Act XII. of 1891.

Act XIV. of 1882.

(*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled;

and shall, at the time that it is pronounced, be signed and dated by the Judge or by the Judges concurring therein.

Date and signature.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision when appeal heard by two or more Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that, if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Dissent to be recorded.

577. The judgment may be for confirming, varying, or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

What judgment may direct.

578.* No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect, or irregularity, whether in the decision or in any order passed in the suit or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

Of the Decree in Appeal.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Date and contents of decree.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

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* As to modification of s 578 in cases where objection is taken on appeal, that suit or appeal was not properly valued for jurisdictional purposes, see Act VII. of 1887, s. 11.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid. Act XIV. of 1882.

The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that, where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed against.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Appellate Court to have same powers as Courts of original jurisdiction.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform, as nearly as may be, the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V.; and in Chapter XXI., so far as may be, "the word 'plaintiff' shall be held to include a plaintiff appellant or defendant-appellant, the word 'defendant' a plaintiff-respondent or defendant-respondent, and the word 'suit' an appeal,"* in proceedings arising out of the death, marriage, or insolvency of parties to an appeal.

The provisions hereinbefore contained, "including those of section 372A."† shall apply to appeals under this chapter, so far as such provisions are applicable.

Validation of certain memoranda of appeals or applications for review of judgment.

582A. ‡ If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation, but is written upon paper insufficiently stamped, and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamp, the memorandum of appeal or application shall have the same effect, and be as valid as if it had been properly stamped: Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake to be fixed by the Court.

Execution of decree of Appellate Court.

583. When a party entitled to any benefit (by way of restitution or otherwise, under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was

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* The words quoted have been substituted by the Civil Procedure Code Amendment Act (VII of 1888), s. 53, for the words "the words 'plaintiff,' 'defendant,' and 'suit,' shall be held to include an appellant, a respondent, and an appeal, respectively."

† The words quoted have been inserted by the same Act and section.

‡ S. 582A has been added by Act VI. of 1892, s. 3.

Act XIV. of 1882. preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

CHAPTER XLII.*

OF APPEALS FROM APPELLATE DECREES.

Second appeals to High Court.

584.† Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely):—

Grounds of second appeal.

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

An appeal may lie under this section from an appellate decree passed *ex parte*.‡

Second appeal on no other grounds.

585.§ No second appeal shall lie except on the grounds mentioned in section 584.

No second appeal in certain suits.

586.‖ No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

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* Ch. XLII. has been repealed in Ajmere and Merwara.—See Reg. I. of 1877, s. 2 and sch., and *supra*, s. 3.

† In the Andaman and Nicobar Islands substitute the following for s. 584: "Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to the High Court, reversing or modifying the decision of the Court of original jurisdiction on a point material to the merits of the case, an appeal shall lie to the High Court, if it appears to that High Court, on a perusal of the ground of appeal and of copies of the judgments of the Courts below, that a further consideration of the case is requisite for the ends of justice."—See Reg. I. of 1884, s. 4.

‡ This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 54.

§ In Coorg add to s. 585: "Provided that in any case in which the decision of the Court of the Commissioner or Assistant Commissioner passed in appeal reverses or modifies the decree or order of the Court of original jurisdiction, and is not declared by any law for the time being in force to be final, the Court of the Judicial Commissioner may admit a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice."—See Reg. I. of 1885, s. 9.

‖ In Coorg substitute for the word "five" in s. 586 "three," and add to the same section: "Provided that the Court of the Judicial Commissioner may admit a second appeal in such suits when the amount or value exceeds one hundred rupees, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice."—See Reg. I. of 1885, s. 9.

In the Andaman and Nicobar Islands, s. 586 has been repealed.—See Reg. I. of 1884, s. 4.

Provisions as to second appeals.

587. The provisions contained in Chapter XLI. shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals. Act XIV. of 1882.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

(1) orders under section 20, staying proceedings in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under section 36 or section 66, directing that a party shall appear in person;

(4) orders under section 44, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under section 111, setting off, or refusing to set off, one debt against another;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;

(9) orders rejecting applications under section 108 "for"* an order to set aside a decree *ex parte*;

(10) orders under sections 113, 120, and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145 directing anything to be impounded;

(13) orders under section 162, for the attachment and sale of moveable property;

(14) orders under section 168, for attachment of property, and orders under section 170, for the sale of attached property;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

(16) orders under section 294, "and orders under"† section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters, under section 351, section 352, section 353, or section 357;

(18) orders under section 366, paragraph two, section 367, or section 368;

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* In this clause, the word "for" has been substituted for the word "or" by the Civil Procedure Code Amendment Act (VII. of 1888), s. 55.

† In this clause, the words quoted have been substituted for the words, "the first paragraph of," by the same Act and section.

Act XIV. of 1882.

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections under section 372;

(22) orders under section 454, section 455, or section 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under section 473, clause (*a*), (*b*), or (*d*), section 475, or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502, or section 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

What Courts to hear appeals.

589.* When an appeal from any† order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court:

Provided that an appeal from an order specified in section 588, clause (17), shall lie—

(*a*) to the District Court where the order was passed by a Court subordinate to that Court, and

(*b*) to the High Court in any other case.‡

Procedure in appeals from orders.

590. The procedure prescribed in Chapter XLI. shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect, or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

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* The first paragraph of this section as originally enacted has been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 56. The repealed paragraph ran as follows: "An appeal from any order specified in section 588, clauses 15, 16, and 17, shall lie to the High Court."

† Here the word "other" has been repealed by the same Act and section.

‡ This proviso has been added by Act X. of 1888.

CHAPTER XLIV.

OF PAUPER APPEALS.

Who may appeal as pauper.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI., XLI., XLII., and XLIII. in so far as those rules are applicable:

Procedure on application for admission of appeal.

Provided that the Court shall reject the application, unless, upon a perusal thereof, and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into pauperism.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Proviso.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

"Decree" defined.

594. In this chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

When appeals lie to Queen in Council.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

an appeal shall lie to Her Majesty in Council—

(*a*) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(*c*) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter.

596. In each of the cases mentioned in clauses (*a*) and (*b*) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards;

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value;

Act XIV. of 1882.

and, where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals.

597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application to Court whose decree complained of.

598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

599. [*Repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 57.*]

Certificate as to value or fitness.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable* to the High Court, to which the former Court is subordinate.

Security and deposit required on grant of certificate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

(*a*) give security for the costs of the respondent, and

(*b*) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and,

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* Here the words, "within thirty days from the date of the order," have been repealed by the Civil Procedure Code Amendment Act (VII. of 1888), s. 57.

(4) such other documents as the High Court may direct to be excluded; Act XIV. of 1882.

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

603. When such security has been completed, and deposit made to the satisfaction of the Court, the Court may

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent, and shall then

(*c*) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(*d*) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor, and paying the reasonable expenses incurred in preparing them.

Revocation of acceptance of security.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to order further security or payment.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

Refund of balance of deposit.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under section 602.

Powers of Court pending appeal.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(*a*) impound any moveable property in dispute or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

Act XIV. of 1882.

(*c*) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(*d*) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

Increase of security found inadequate.

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And, if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to enforce orders of Queen in Council.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

In so far as the order awards costs to the respondent, it may be executed against a surety therefor, to the extent to which he has rendered himself liable, in the same manner as it may be executed against the appellant:*

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.*

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal against order relating to execution.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same

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* This paragraph has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 58.

manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees. Act XIV. of 1882.

Power to make rules.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

(*a*) the service of notices under section 600;

(*b*) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;

(*c*) the amount and nature of the security required under sections 602, 605, and 609;

(*d*) the testing of such security;

(*e*) the estimate of the cost of transcribing the record;

(*f*) the preparation, examination, and certifying of such transcript;

(*g*) the revision and authentication of translations;

(*h*) the preparation of indices to transcripts of records, and of lists of the papers not included therein;

(*i*) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council;

and all other matters connected with the enforcement of this chapter.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Legalization of existing rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Recorder of Rangoon.

614. In sections 595 and 612, the expression "High Court" shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction of Bengal Regulation III. of 1828, section 4, clause 5.

615. The rules and restrictions referred to in Bengal Regulation III. of 1828, section IV., clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving of Her Majesty's pleasure,

616. Nothing herein contained shall be understood—

(*a*) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

and of rules for conduct of business before Judicial Committee.

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council or their conduct before the said Judicial Committee.

Act XIV. of 1882. And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

Reference of question to High Court.

617. If, before or on the hearing of a suit or an appeal in which the decree is final, or if, in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may pass decree contingent upon opinion of High Court.

618.* The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued, property sold, or person imprisoned, in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

619.* The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court.

620.* Costs (if any) consequent on a reference for the opinion of the High Court shall be costs in the case.

Power to alter, &c., decrees of Court making reference.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel, or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to call for record of cases not appealable to High Court.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its juris-

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* Ss. 618-620 have been repealed in Ajmere and Merwára.—See Reg. I. of 1877, s. 2 and sch., and *supra*, s. 3.

diction "illegally or"* with material irregularity; and may pass such order in the case as the High Court thinks fit. Act XIV. of 1882.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment.

623. Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is hereby allowed; or

(*c*) by a judgment on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court (if any) to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except, when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

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* S. 622, in its application to the territories to which the Panjáb Courts Act (XVIII. of 1884) extends, shall be read as if the words "illegally or" were omitted, and for the purposes of that section no appeal shall be deemed to lie from the appellate decree of a Divisional Court to the Chief Court when the case does not fall under cl. A, cl. B, or cl. C of s. 40, and an application under cl. D of that section has been refused.—Panjáb Courts Act (XVIII. of 1884), s. 70. S. 70 of Act XVIII. of 1884 has, however, been repealed in so far as regards Revenue Courts by Act XVI. of 1887, s. 3 and sch. If the Court, on an application under s. 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section, sets aside or modifies the decree or order of a Subordinate Court, or remands the case for a fresh decision, it may grant to the applicant a certificate authorising him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstance of the case, it may think proper to order to be refunded.—Panjáb Courts Act (XVIII. of 1884), s. 72.

In the Andaman and Nicobar Islands, substitute the following for s. 622:—

"The High Court may call for the record of any proceeding of a Court subordinate to it, and, if it appears that there has been in the proceeding an error material to the merits of the case, may pass such judgment or order thereon as it thinks fit."—See Reg. I. of 1884, s. 4.

Act XIV. of 1882.

Form of applications for review.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Application when rejected.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when granted.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion:

Proviso.

Provided that—

(*a*) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation; and

(*c*) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (*a*) to this section, be disposed of by his successor.*

Application for review in Court consisting of two or more Judges.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges, or any of them, shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application when rejected.

628. If the application for a review be heard by more than one Judge, and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

Order of rejection final. Objections to admission.

629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was—

(*a*) in contravention of the provisions of section 624,

(*b*) in contravention of the provisions of section 626, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

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* This clause has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 59.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same. Act XIV of 1882.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case, or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted, and order for re-hearing.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India.*)

Chapter to apply only to certain High Courts.

632. Except as provided in this chapter, the provisions of this Code apply to such High Courts.

Application of Code to High Courts.

633. The High Court shall take evidence, and record judgments and orders, in such manner as it by rule from time to time directs.

High Court to record judgments according to its own rules.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

Power to order execution of decree before ascertainment of costs, and

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

execution for costs subsequently.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have, in the exercise of the power conferred by its charter, authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils, and attorneys.

Unauthorized persons not to address Court.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction

Who may serve process of High Court.

Act XIV. of 1882.

of the High Court, and of its matrimonial, testamentary, and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

Non-judicial acts may be done by Registrar.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Sections not applying to High Court in original civil jurisdiction.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17, and 19, sections 54, clauses (*a*) and (*b*), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

Power to frame forms.

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries, and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

Exemption of certain women from personal appearance.

640. Women, who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process, "in any case in which the arrest of women is not prohibited by this Code."*

Local Government may exempt certain persons from personal appearance.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

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* The words quoted have been added by the Debtors' Act (VI. of 1888), s. 6.

The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court. Act XIV. of 1882.

Lists of names of persons exempted to be kept in Courts.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Costs of commission rendered necessary by claiming privilege.

642. No Judge, Magistrate, or other judicial officer, shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Persons exempt from arrest under civil process.

And, "except as provided in section 337A, sub-section (5), and sections 256 and 643,"* where any matter is pending before a tribunal, having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When, in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477, of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

Procedure in case of certain offences.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge, and proceed with it according to law.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Use of forms in fourth schedule.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

Language of subordinate Courts.

but it shall be lawful for the Local Government, from time to time, to declare what language shall be the language of every such Court.

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* The words quoted have been substituted by the Debtors' Act (VI. of 1888), s. 7, for the words "except as provided in ss. 256 and 643," as originally enacted.

Act XIV. of 1882.

Assessors in causes of salvage, &c.

645A. In any Admiralty or Vice-Admiralty cause of salvage, towage, or collision, the Court, whether it be exercising its original or its appellate jurisdiction may, if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may, by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

Power of Registrars of Small Cause Courts to state cases.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Power to refer to High Court questions as to jurisdiction in small causes.

646A.* (*1*) If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(*2*) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

646B.* (*1*) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and, if required by a party, shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(*2*) On receiving the record and statement, the High Court may pass such order in the case as it thinks fit.

(*3*) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

(*4*) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of the section.

Miscellaneous proceedings.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Admission of affidavits as evidence.

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

* This section has been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 60.

Explanation.—This section does not apply to applications for the execution of decrees which are proceedings in suits.* Act XIV. of 1882.

Procedure when person to be arrested or property to be attached is outside district.

648. Where any Court desires that any person shall be arrested, or that any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides, or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest, or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment:

and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV.) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.†

Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay, or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.‡

Rules applicable to all civil processes for arrest, sale, or payment.

649. The rules contained in Chapter XIX. shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression "Court which passed a decree," or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

Application of rules as to witnesses.

650. The provisions of Chapters XIV. and XV., relating to witnesses, shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

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* To s. 647 the explanation has been added by Act VI. of 1892, s. 4.

† This paragraph has been substituted for the original by the Civil Procedure Code Amendment Act (VII. of 1888), s. 61.

‡ This paragraph has been added by the same Act and section.

Act XIV. of 1882.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India, and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established "or continued"* by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

Service of foreign summonses.

The Governor-General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

651. [*Repealed by Act X. of 1886, s. 24, and inserted in the Penal Code as s. 225B.*]

652. The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power to make subsidiary rules of procedure.

A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*An Act for Establishing High Courts of Judicature in India*), may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of that Statute, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure.†

653.‡ (*1*) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Release on ground of illness of judgment-debtor.

(*2*) When a judgment debtor has been arrested under this Code, the Court may release him, if, in its opinion, he is not in a fit state of health to undergo imprisonment.

(*3*) When a judgment-debtor has been committed to jail, he may be released therefrom—

(*a*) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(*b*) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(*4*) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not, in the aggregate, exceed that prescribed in section 342 or section 481, as the case may be.

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 62.

† This paragraph has been added by the Civil Procedure Code Amendment Act (VII. of 1888), s. 63.

‡ This section has been added by the Debtors' Act (VI. of 1888), s. 8.

THE FIRST SCHEDULE.

(See section 3.)

ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X. of 1877 ...	The Code of Civil Procedure ...	So much as has not been repealed.
XII. of 1879 ...	Amending Act X. of 1877, &c.	Sections 1 to 103 (both inclusive).
VII. of 1880 ...	Merchant Shipping ...	Section 85.

THE SECOND SCHEDULE.*

(See section 5.)

Chapters and Sections of this Code extending to Provincial Courts of Small Causes.

PRELIMINARY: Sections 1, 2, 3, and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res judicata*, except section 11 and the last paragraph of section 14.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of parties and their Appearances, Applications, and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44 rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214, and 215.

CHAPTER XVIII.—Of Costs, sections 220, 221, and 222.

* This schedule has been substituted for the one originally enacted by Act X. of 1888.

Act XIV. of 1882.

CHAPTER XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290 (so far as relates to moveable property), 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).

CHAPTER XX.—Section 360, Power to invest certain Courts with insolvency-jurisdiction.

CHAPTER XXI.—Of the Death, Marriage, and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVI.—Suits by Paupers.

CHAPTER XXVII.—Suits by and against Government or Government Servants.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native rulers

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors, and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.

CHAPTER XXXVI.—Appointment of Receivers.

CHAPTER XXXVII.—Reference to Arbitration.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties.

CHAPTER XLVI.—Reference to, and Revision by, High Court.

CHAPTER XLVII.—Of Review of Judgment, sections 623, 626, and 630.

CHAPTER XLIX.—Miscellaneous.

THE THIRD SCHEDULE.

(*See section 7.*)

Bombay Enactments.

Bombay Regulation XXIX., 1827.
" " VII., 1830.
" " I., 1831.
" " XVI., 1831.
Act XIX. of 1835.
" XIII. of 1842.

THE FOURTH SCHEDULE.

(*See section 644.*)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF AT

Civil Suit No.

A. B., of

against

C. D., of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he lent the defendant rupees, re-payable on demand [*or* on the day of].

2. That the defendant has not paid the same, except rupees, paid on the day of 18 .

[*If the plaintiff claims exemption from any law of limitation, say :*—

3. The plaintiff was a minor [*or* insane] from the day of till the day of].

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(*Title.*)

A. B. and *G. H.*, the above-named plaintiffs, state as follows :—

1. That on the day of 18 , at , the defendant received rupees [*or* a cheque on the Bank for rupees] from one *E. F.* for the use of the plaintiffs.

2. That the defendant has not paid [*or* delivered] the same accordingly.

3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.

2. That on the day of 18 [*or* on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandize for rupees.

3. That the commission and expenses of the defendant thereon amount to rupees.

4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandize.

5. That he has not paid the same.

[*Demand of judgment.*]

Act XIV. of 1882.

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant rupees annas therefore.

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , at the request [*or* by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.

2. That, in consideration thereof, the defendant promised [*or* became bound] to pay the same to the plaintiff on demand [*or as the case may be*].

3. That [on the day of 18 ; the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E. F.*, of , deceased, sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, *or* sundry goods.]

2. That the defendant promised to pay rupees for the said goods on delivery [*or* on the day of , *some day before the plaint was filed*].

3. That he has not paid the same.

4. That the said *E. F.*, in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 18 , the said *E. F.* died.

6. That on the day of probate of the said will was granted to the plaintiff by the Court of ,

7. The plaintiff as executor as aforesaid.

[*Demand of judgment.*]

[NOTE.—If a day was fixed for payment, it should be stated as furnishing a date for the commencement of interest.]

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold to the defendant [*one hundred barrels of flour*], and, at the request of the defendant, delivered the same to one *E.F.*

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff furnished to [*Mary Jones*], the wife of [*James Jones*], deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said *James Jones* refused to pay the same.

5. That the defendant is the executor of the last will of the said *James Jones*.

[*Demand of judgment.*]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold to *E.F.*, of , deceased [*all the crops then growing on his farm in*].

2. That the said *E.F.* promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said *E.F.*

[*Demand of judgment.*]

Act XIV. of 1882.

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E.F.*, of , sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E.F.* to be a lunatic, and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That on the day of the Civil Court of duly adjudged the said *E.F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.

5. The plaintiff as manager as aforesaid.

[*Demand of judgment.*]

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E.F.* of , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E.F.* should pay for the same upon the delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said *E.F.*, and has ever since been ready and willing so to do.

3. That the said *E.F.* has not accepted the said goods or paid for the same.

4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said *E.F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for rupees with interest from the day of at the rate of per cent. per annum, to be paid out of the estate of the said *E.F.*, in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff put up at auction sundry *articles of merchandize*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction, on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees. Act XIV. of 1882.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[Demand of judgment.]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX. of 1872, sec. 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound, No. , in the city of , *or* a farm known as , in , *or* a piece of land lying, *&c.*]

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say in § 1, "sold to the defendant the house, &c., and placed him in possession of the same."]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house, No. , in the town of , *or* one hundred bighas of land in , bounded by the East Indian railroad, and by the other lands of the plaintiff] for rupees.

2. That on the day of 18 , at , the plaintiff tendered [*or* was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[Demand of judgment.]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at a salary of rupees per year].

2. That from the [said day], until the day of 18 , the plaintiff served the defendant as his [clerk].

3. That the defendant has not paid the said salary.

[Demand of judgment.]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs, and diagrams] for the defendant

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at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of , 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].

2. That the defendant promised to pay rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request; but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 20.

FOR RENT RESERVED IN A LEASE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[*Or state the substance of the contract.*]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[*Demand of judgment.*]

Another Form.

1. That the plaintiff let to the defendant a house No. 27, Chowringhee, for seven years, to hold from the day of 18 , at rupees a year payable quarterly.

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant hired from the plaintiff [the house, No. , Street], at the rent of rupees, payable on the first day of

2. That the defendant occupied the said premises from the day of 18 , to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[*Demand of judgment.*]

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(*Title.*)

A. B., the above-named plaintiff, executor of the will of *X. Y.*, deceased, states as follows:—

1. That the defendant occupied [the house, No. , Street] by permission of the said *X. Y.*, from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff, as such executor as aforesaid, prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. , Street] by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2. That in consideration thereof, the defendant promised to pay [*or* that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth] the sum of rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 24.

FOR FREIGHT OF GOODS.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff transported in [his barge, *or otherwise*] [one thousand barrels of flour *or* sundry goods], from to , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [*or* that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 25.

FOR PASSAGE-MONEY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the] from to at his request.

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2. That the defendant promised to pay the plaintiff rupees therefor [*or* that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 26.

ON AN AWARD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 ; at ; the plaintiff and defendant having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.* as arbitrators [*or* entered into an agreement, a copy of which is hereto annexed].

2. That on the day of 18 , at , the said arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. That defendant has not paid the same.

[*Demand of judgment.*]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

No. 27.

ON A FOREIGN JUDGMENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , in the State [*or* Kingdom] of , the Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. That the defendant has not paid the same.

[*Demand of judgment.*]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that, if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 18 , the sum of rupees for of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

[*Demand of judgment.*]

No. 29.

PAYEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees [days] after date.

2. That he has not pa'd the same [except rupees, paid on the day of 18]. Act XIV. of 1882.

[*Demand of judgment.*]

[NOTE.—*Where the note is payable after notice, for paragraphs 1 and 2 substitute* :—]

1. That on the day of 18 , at , the defendant, by his promissory note, promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[*Where the note is payable at a particular place, say*—]

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. *A and Co.'s*, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. *A and Co.'s*] aforesaid, but has not been paid.

Written Statement of the Defendant.

In the Court, &c.

C. D., the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances: The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books, and inquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000, and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [or to *E. F.* or order] rupees [days after date].

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]

2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or* and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

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No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 , the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER: THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees [payable days after date].

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff [*or* that the said *E. F.* indorsed the same to the plaintiff].

3, 4, and 5. [*Same as 3, 4, and 5 of the last preceding form.*]

[*Demand of judgment.*]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant.

2, 3, and 4. [*Same as in 3, 4, and 5 in Form No. 33.*]

[*Demand of judgment.*]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2, 3, and 4. [*As in No. 33.*]

[*Demand of judgment.*]

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.

IN THE COURT OF AT

Civil Suit No.

A. B., of

against

C. D., of

E. F., of

and

G. H., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees [months after date].

2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. That on the day of 18 , the same was presented [*or state facts excusing want of presentment*] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof.

5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees [days after date, *or* sight thereof].

2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—*Where the bill is payable to a third party, for paragraphs 1, 2, 3, say*—]

1. That on, &c., at, &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.

2. That the plaintiff delivered the said bill to the said *E. F.* on

3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted the bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.

2. That he has not paid the same.

[*Demand of judgment.*]

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No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. [*As in the last preceding form, to the end of the article 1.*]

2. That by the endorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight].

2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [*or* after date, *or* at sight] thereof [and accepted by the said *G. H.* on the day of 18].

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 .

at , requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof [*or otherwise*], and accepted by the said *I. J.* on the day of 18 . [*This clause may be omitted, if not according to the fact.*]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 44.[s]

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of one *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR, AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B., of

against

C. D., of

E. F., of

and

G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.* to pay to

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the order of the defendant *G. H.* rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling [sixty days] after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one *F. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [*or* days after sight] thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 49.

ON A MARINE [OPEN] POLICY ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff was the owner of [*or* had an interest in] the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [*or* which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [*or* whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [*or otherwise*].

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part. Act XIV. of 1882.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

On Cargo lost by Fire:—Valued Policy.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed; [*or* whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or* as the case may be).

4, 5, and 6. [*As in paragraphs 4, 5, and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 51.

On Freight:—Valued Policy.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss, as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [*As in Form No. 49.*]

[*Demand of judgment.*]

No. 52.

For a Loss by General Average.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y. Z.*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [*or state its tenor, as before*].

Act XIV of 1882.

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

For a Particular Average Loss.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs 5 and 6 of the last preceding form*]

[*Demand of judgment.*]

No. 54.

On a Fire Insurance Policy.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house known as No. , Street, in the city of], at the time of its destruction [*or* injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or* greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

Against Surety for Payment of Rent.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one *E. F.* hired from the plaintiff, for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add:*—]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. , Street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant, and tendered rupees to the defendant [*or* that all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That the defendant has not executed any conveyance of the said property to the plaintiff [*or* that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, *or any other defect of title*].

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighas of land in the village of for rupees.]

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [*or* was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

Act XIV. of 1882.

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say):—

(*a*) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment.*]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*Demand of judgment.*]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of judgment.*]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 , offered so to do].

3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards on the day of 18 , he refused to serve the plaintiff as aforesaid.

[*Demand of judgment.*]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[*Demand of judgment.*]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed.

[*Or state the tenor of the contract.*]

2. That, after the making of the said agreement, the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed, and been ready and willing to perform, all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continues so to do.

[*Demand of judgment.*]

* The form given in Act XIX. of 1850 requires the seal of the father or guardian.

Act XIV. of 1882.

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That, after the making of the said agreement, the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment.*]

[*Demand of judgment.*]

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff that, if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[*Or*, 2. That at the same time and place the defendant bound himself to the plaintiff by a writing under his hand, in the penal sum of rupees, conditioned that, if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[*Or*, 2. That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment.*]

No. 67.

BY TENANT AGAINST LANDLORD WITH SPECIAL DAMAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. , Street] for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representative, should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of , during the said term, one *E. F.*, who was the lawful owner of the said house, unlawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal]. Act XIV. of 1882.

[*Demand of judgment.*]

No. 68.

For Breach of Warranty of Moveables.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

No. 69.

On an Agreement of Indemnity.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant being partners in trade under the firm of *A. B.* and *C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all the debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 , [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at upon a debt due from the said firm to the said *E. F.* and on the day of 18], the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70.

By Shipowner against Freightor for not Loading.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship , at , on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered to receive [the said merchandise, *or* the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

Act XIV. of 1882.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered upon certain land of the plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[*Demand of judgment.*]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(*Title.*)

A. B., the above named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[*Demand of judgment.*]

No. 73.

FOR TRESPASS ON MOVEABLES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [*or* seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, *or as the case may be*, and carried away the same, and disposed of them to his own use]:

or seized and took the plaintiff's cows and bullocks, and impounded them, and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise state the injury according to the facts*].

[*Demand of judgment.*]

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed [*or* of one thousand barrels of flour].

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[*Demand of judgment.*]

The Schedule.

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [*or* rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [*or* the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

[*Demand of judgment.*]

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [*or state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered.* That the plaintiff, in preparing and shipping the said goods, and procuring their restoration, expended rupees.]

[*Demand of judgment.*]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one *E. F.* was solvent and in good credit, and worth rupees over all his liabilities [*or* that *E. F.* then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to the said *E. F.* [rice] of the value of rupees [on month's credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or* to deceive and injure the plaintiff].

4. That the said *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water in the said

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well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein, and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[*Demand of judgment.*]

No. 79.

For carrying on a Noxious Manufacture.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in .

2. That ever since the day of 18 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands, were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[*Demand of judgment.*]

No. 80.

For obstructing a Way.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway, and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, *or* on foot] at all times of the year.

3. That on the day of 18 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or* on foot, *or* in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [*State special damage, if any.*]

[*Demand of judgment.*]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench], and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*Demand of judgment.*]

No. 81.

FOR DIVERTING A WATERCOURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18 , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That, by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[*Demand of judgment.*]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands, situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*Demand of judgment.*]

No. 83.

FOR WASTE BY A LESSEE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant hired from him [the house No. , Street], for the term of .

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; *or otherwise specify the injuries as far as possible*].

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant assaulted and beat him.

The plaintiff prays judgment for rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY WITH SPECIAL DAMAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant assaulted and beat him until he became insensible.

Act XIV of 1882.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be.*]

[*Demand of judgment.*]

No. 86.

For Assault and False Imprisonment.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant assaulted the plaintiff and imprisoned him for days [*or* hours]; [*state special damage, if any, thus:*—]

2. That by reason thereof, the plaintiff suffered great pain of body and mind, and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be*].

[*Demand of judgment.*]

No. 87.

For Injuries caused by Negligence on a Railroad.

(*Title.*)

A. B, the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at [*or* near the station of ; *or* between the stations of and], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus:*—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *&c., as in* § 3.]

No. 88.

For Injuries caused by Negligent Driving.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of

2. On the [23rd May 1875], the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(*Title.*)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E. F.* and *G. H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. *E. F.* and *G. H.*].

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [*or* in a letter addressed to *E. F.*], the following words concerning the plaintiff:—

[*Set forth the words used.*]

2. That the said publication was false and malicious.

[*Demand of judgment.*]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"Which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that is to say [*here set out a literal translation of the libel in the language of the Court*].

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of

2. That on the day of 18 ; at , the defendant published in a newspaper called the [*or* in a letter addressed to *E. F., or otherwise how published*], the following words concerning the plaintiff:—

["*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address."]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[*Demand of judgment.*]

Act XIV of 1882.

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendants falsely and maliciously spoke, in the hearing of *E. F.* [*or* sundry persons], the following words concerning the plaintiff: ["He is a thief."]

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

[*Demand of judgment.*]

No 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff: ["He is a young man of remarkably easy conscience."]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[*Demand of judgment.*]

No. 93.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a Magistrate of the said city, *or, as the case may be*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days *or* hours, and gave bail in the sum of rupees to obtain his release].

2. That, in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said Magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or* that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*; *or* that, by reason of the premises, the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment, and in defending himself against the said complaint.

[*Demand of judgment.*]

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That *X. Y.* was the absolute owner [of the estate *or* the share of the estate called , situate in the district of , the Government revenue of which rupees , and the estimated value rupees, *or* of the house No. , Street, in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , *Z* illegally dispossessed the said *X. Y.* of the said estate [*or* share *or* house]. Act XIV of 1882.

3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.

4. That the defendant withholds the possession of the estate [*or* share *or* house] from the plaintiff.

The plaintiff prays judgment—

(1) for the possession of the said premises;

(2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows :—

1. On the day of 18 , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims—

(1) possession of the said house and premises;

(2) rupees for arrears of rent;

(3) rupees compensation for the defendant's breach of his covenant to repair;

(4) rupees for the occupation of the house and premises from the day of 18 , to the day of recovering possession.

No. 95.

By the Tenant.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows :], the estimated value of which is rupees.

2. That on the day of 18 , the said *E. F.* let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

[*Demand of judgment.*]

No. 96.

For Moveable Property Wrongfully taken.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [*or* was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment—

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

Act XIV, of 1882.

No. 97.

FOR MOVEABLES WRONGFULLY DETAINED.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2. That, from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment—

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant [*C. D.*], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or*, That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]

4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation].

The plaintiff prays judgment—

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at contained [ten bighas].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

The plaintiff prays judgment—

(1) for rupees, with interest from the day of 18 ;

(2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is the absolute owner of [*describe the property*].

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(*Title.*)

A. B., the above-named plaintiff states as follows:—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , Street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. That on the day of 18 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATERCOURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

[*As in form No. 81.*]

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter]; and of which no duplicate exists [*for state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the day of 18 , he deposited the same for safe keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

Act XIV. of 1882.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

The plaintiff prays judgment—

(1) that the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting];

(2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff [*describe the property*] for [safe keeping].

2. That the defendant, *C. D.*, claims the same [under an alleged assignment thereof to him from the said *G. H.*].

3. That the defendant, *E. F.*, also claims the same [under an order of the said *G. H.* transferring the same to him].

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorized to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. *E. F.*, late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [*here insert nature of debt and security, if any*].

2. The said *E. F.* made his will, dated the day of , and thereof appointed *C. D.* executor [*or* devised his estate in trust, &c., *or* died intestate, *as the case may be*].

3. The said will was proved by the said *C. D.* [*or* letters of administration were granted, &c.].

4. The defendant has possessed himself of the moveable [and immoveable, *or* the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the day of

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(*Title.*)

[*Alter Form No. 105 thus*:—]

[*Omit paragraph 1, and commence paragraph 2*—] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(*Title.*)

[*Alter Form No. 105 thus :—*]

[*Omit paragraph 1 and substitute for paragraph 2—*] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff a legacy of rupees.

In paragraph 4, substitute "legacy" *for* "debt."

Another Form.

Between *E. F.* ... ... *Plaintiff,*

and

G. H. ... ... *Defendant.*

E. F., the above-named plaintiff, states as follows :—

1. *A. B.*, of *K.*, in the , duly made his last will, dated the [first day of March 1873], whereby he appointed the defendant and *M. N.* [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and, after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July 1878], and his will was proved by the defendant on the [fourth day of October 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property, and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

(1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

Between *E. F.* ... ... *Plaintiff,*

and

G. H. ... ... *Defendant.*

Written Statement of Defendant.

1. *A. B.'s* will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees ; and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

Act XIV. of 1882.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

Execution of Trusts.

In the Court of at

Civil Suit, No.

A. B., of ... *Plaintiff,*

against

C. D., of , the beneficiary [*or* one of the beneficiaries], ... *Defendant.*

A. B., the above-named plaintiff, states as follows:—

1. That he is one of the trustees under an instrument of settlement, bearing date on or about the day of , made upon the marriage of *E. F.* and *G. H*, the father and mother of the defendant [*or* an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*].

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the moveable and immoveable property *conveyed* [*or* assigned] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may show good cause to the contrary.

[*N. B.—Where the suit is by a beneficiary, the plaint may be modelled*, mutatis mutandis, *on the plaint by a legatee.*]

No. 109.

Foreclosure or Sale.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. By a mortgage-deed, dated the day of 18 , a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him, the plaintiff, his heirs [*or* executors, administrators], and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs. , with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed, and the plaintiff placed in possession of the same premises; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs;

and (*c*) that, if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court. Act XIV of 1882.

No. 110.

REDEMPTION.

(*Title.*)

[*Alter Form No. 109 thus :—*]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant for principal and interest on the said mortgage the sum of Rs. , which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises, and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE (No. 1.)

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. By an agreement, dated the day of , and signed by the above-named defendant *C. D.*, he the said *C. D.* contracted to buy of [*or* sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [*or* to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[*N. B.—In suits for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

No. 112.

SPECIFIC PERFORMANCE (No. 2.)

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

Act XIV. of 1882.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*];

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. He and the said *C. D.*, the defendant, have been, for the space of years [*or* months] last, past, carrying on business together at , within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [*or* under a certain deed sealed and executed by them respectively, *or* under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [*or* deed, *or* agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [*or* deed, *or* agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by , of , pleader for the plaintiff, [*or* by].

[*N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution: but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

No. 114.

FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

Money lent.	The plaintiff's claim is	rs. for money lent [and interest].
Several demands.	The plaintiff's claim is	rs. whereof rs. is for the price of goods sold, and rs. for money lent, and rs. for interest.
Rent.	The plaintiff's claim is	rs. for arrears of rent.
Salary, &c.	The plaintiff's claim is	rs. for arrears of salary as a clerk [*or as the case may be*].
Interest.	The plaintiff's claim is	rs. for interest upon money lent.
General average.	The plaintiff's claim is	rs. for a general average contribution.
Freight, &c.	The plaintiff's claim is	rs. for freight and demurrage.

FORMS OF CONCISE STATEMENTS—*continued.*

Banker's balance.	The plaintiff's claim is rs. for money deposited with the defendant as a banker.
Fees, &c., as pleader.	The plaintiff's claim is rs. for fees for work done [and rs., money expended] as a pleader.
Commission.	The plaintiff's claim is rs. for commission earned as [*state character—as* auctioneer, cotton-broker, &c.].
Medical attendance.	The plaintiff's claim is rs. for medical attendances.
Return of premium.	The plaintiff's claim is rs. for a return of premiums paid upon policies of insurance.
Warehouse-rent.	The plaintiff's claim is rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is rs. for the carriage of goods by railway.
Use and occupation of house.	The plaintiff's claim is rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is rs. for the hire of [furniture].
Work done.	The plaintiff's claim is rs. for work done as a [surveyor].
Board and lodging.	The plaintiff's claim is rs. for board and lodging.
Schooling.	The plaintiff's claim is rs. for the [board, lodging, and] tuition of *X. Y.*
Money received.	The plaintiff's claim is rs. for money received by the defendant as pleader [*or* factor, *or* collector, *or*, *&c.*] of the plaintiff.
Fees of office.	The plaintiff's claim is rs. for fees received by the defendant under colour of the office of
Money overpaid.	The plaintiff's claim is rs. for a return of money overcharged for the carriage of goods by railway.
	The plaintiff's claim is rs. for a return of fees overcharged by the defendant as
Return of money by stake-holder.	The plaintiff's claim is rs. for a return of money deposited with the defendant as stake-holder.
Money won from stake-holder.	The plaintiff's claim is rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is rs. for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud.	The plaintiff's claim is rs. for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is rs. for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is rs. for a return of money paid to the defendant for [work to be done, *or* work left undone; *or* a bill to be taken up, *or* a bill not taken up, *or*, *&c.*].
	The plaintiff's claim is rs. for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is rs. for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is rs. for money paid for rent due by the defendant.
Money paid on accommodation-bill.	The plaintiff's claim is rs. upon a bill of exchange accepted [*or* indorsed] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

FORMS OF CONCISE STATEMENTS—*continued.*

Money paid for calls. The plaintiff's claim is rs. for money paid for calls upon shares against which the defendant was bound to indemnify the plaintiff.

Money payable under award. The plaintiff's claim is rs. for money payable under an award.

Life-policy. The plaintiff's claim is rs. upon a policy of insurance upon the life of *X. Y.*, deceased.

Money-bond. The plaintiff's claim is rs. upon a bond to secure payment of rs. and interest.

Foreign judgment. The plaintiff's claim is rs. upon a judgment of the Court in [the Empire of Russia].

Bills of exchange, &c. The plaintiff's claim is rs. upon a cheque drawn by the defendant.

The plaintiff's claim is rs. upon a bill of exchange accepted [*or* drawn *or* indorsed] by the defendant.

The plaintiff's claim is rs. upon a promissory note made [*or* indorsed] by the defendant.

The plaintiff's claim is rs. against the defendant, *A. B.*, as acceptor, and against the defendant, *C. D.*, as drawer [*or* indorser] of a bill of exchange.

Surety. The plaintiff's claim is rs. against the defendant as surety for the price of goods sold.

The plaintiff's claim is rs. against the defendant, *A. B.*, as principal, and against the defendant, *C. D.*, as surety, for the price of goods sold [*or* for arrears of rent, *or* for money lent, *or* for money received by the defendant, *A. B.*, as traveller for the plaintiff, *or*, *&c.*].

Calls. The plaintiff's claim is rs. for calls upon shares.

Indorsement for Costs, &c.

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or, if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

Damages and other claims.

Agent, &c. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and rs. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and rs. for money received as factor, *or*, *&c.*].

Apprentices. The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant [*or* plaintiff].

Arbitration. The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*

Assault, &c. The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].

By husband and wife. The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C. D.*

Against husband and wife. The plaintiff's claim is for damages for assault by the defendant, *C. D.*

Pleader. The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.

Bailment. The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

FORMS OF CONCISE STATEMENTS—*continued.*

Pledge. The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

Hire. The plaintiff's claim is for damages for negligence in the custody of furniture [*or* a carriage] lent on hire [and for wrongfully, *&c.*].

Banker. The plaintiff's claim is for damages for wrongfully neglecting [*or* refusing] to pay the plaintiff's cheque.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a

Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*].

Claim for return of goods; damages. The plaintiff's claim is for return of household furniture [*or*, *&c.*], of their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

Defamation. The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

Wrongful distress. The plaintiff's claim is for damages for improperly distraining.

[*This form shall be sufficient, whether the distress complained of be wrongful, or excessive, or irregular.*]

Ejectment. The plaintiff's claim is to recover possession of a house, No. in Street, or of a farm, called Blackacre, situate in the of in the of .

To establish title and recover rents. The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or* a business, *or* shares, *or*, *&c.*].

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.*

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship [*Royal Charter*], and freight of cargo [*or* for return of premiums].

[*This Form shall be sufficient, whether the loss claimed be total or partial.*]

Fire-insurance. The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant. The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

Act XIV. of 1882.

FORMS OF CONCISE STATEMENTS—*continued.*

Landlord and tenant. The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence. The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

Act XIII. of 1855. The plaintiff's claim is as executor of *A. B.*, deceased, for damages for the death of the said *A. B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.

Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or, &c.*].

Sale of land. The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] land.

The plaintiff's claim is for damages for breach of a contract to let [*or* take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] the lease, with good-will, fixtures, and stock-in-trade of a public house.

Trespass on land. The plaintiff's claim is for damages for breach of covenant for title [*or* for quiet enjoyment, *or*, *&c.*] in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* felling his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road or path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river].

Support. The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house, *or* mine].

Way. The plaintiff's claim is for damages for wrongfully obstructing a way [*or* public highway, *or* private way].

Watercourse, &c. The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting, water from] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient, whatever the nature of the right to pasture be.*]

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

FORMS OF CONCISE STATEMENTS—*continued.*

Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copy-right. The plaintiff's claim is for damages for the infringement of the plaintiff's copy-right.

Trade-mark. The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade-mark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, &c].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c. caused by noxious vapours from the defendant's factory [*or, &c.*].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables, *or, &c.*].

Injunction. [*Add to indorsement*] :—and for an injunction.

[*Add to indorsement where claim is to land, or to establish title, or both*] :—

Mesne-profits. and for mesne-profits.

Arrears of rent. and for an account of rents or arrears of rent.

Breach of covenant. and for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X. Y.*, of , deceased, to have the moveable and immoveable property of the said *X. Y.*, administered. The defendant, *C. D.*, is sued as the administrator of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his co-heirs-at-law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.*, deceased, to have the moveable and immoveable property of the said *X. Y.*, administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [*parties*] [*or* by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [*parties*], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of rs., which, by a deed of settlement, dated , was provided for the portions of the younger children of , may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture, dated and made between [*parties*], carried into execution.

Act XIV. of 1882.

FORMS OF CONCISE STATEMENTS—*continued.*

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed, dated , and made between [*parties*], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement, dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will, dated the day of , of *C. D.*, late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [*or as the case may be*].

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will, dated the day of , of *C. D.*, late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This summons is issued against you as the executor of the said pretended will [*or as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of *C. D.*, late of , deceased, who died on the day of , dated the day of

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of *C. D.*, of , deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [*or as the case may be*].

F.—MISCELLANEOUS.

No. 116.

Section 58 of the Code of Civil Procedure.

COURT of the of holden at

REGISTER OF CIVIL SUITS in the year 18

Date of presentation of plaint.	No. of suit.	PLAINTIFF.			DEFENDANT.			CLAIM.		APPEARANCE.		JUDGMENT.		APPEAL.		EXECUTION.					RETURN OF EXECUTION.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount of value.	When the cause of action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of appeal.	Judgment in appeal.	Date of application.	Date of order.	Against whom.	For what, and amount if money.	Amount of costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and date of every Return.

Act XIV. of 1882.

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court, in person or by a duly authorized pleader of the Court duly instructed, and able to answer all material questions relating to the suit or who shall be accompanied by some other person able to answer all such questions, on , the day of 18 , at o'clock in the forenoon, to answer the above-named *plaintiff; and as the* day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day ; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence ; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

NOTE.—*If written statements are required, say*—You are [*or* such a party is, *as the case may be*] required to put in a written statement by the day of

No. 118. Act XIV. of 1882.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on , the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

NOTE.—*If written statements are required, say*—You are [*or* such a party is, *as the case may be*] required to put in a written statement by the day of .

Act XIV. of 1882.

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.

To Defendant.

[*Name, description, and address.*]

WHEREAS [*here enter the name, description, and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*if not specially required to appear in person, state*—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here*—"and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you [or send by your agent] [*here mention any document the production of which may be required by the plaintiff*], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil suit, No. of 18 .

A. B., of

against

C. D., of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in the above suit , is at present residing in , but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the day of 18 , be forwarded for service on the said defendant, to the Court of , with a duplicate of this proceeding.

[L. S.]

Judge.

No. 121.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

The day of 18 .

A. B., of

against

C. D., of

Read the proceeding from the forwarding for service on in Civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath *or*] affirmation of and , it is ordered that the be returned to the with a copy of this proceeding. Act XIV. of 1882.

[L. S.]

Judge.

NOTE.—*This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.*

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(*Title.*)

I, the undersigned defendant [*or* one of the defendants], disclaim all interest under the will of the said *E. F.* in the plaint named [*or* as heir-at-law, *or* as next-of-kin, *or* one of the next-of-kin, of *E. F.*, deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [*or* deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [*or* that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, *or* that it appears by the said plaint that *G. H.* should have been a joint plaintiff with the said *A. B.* in the said suit, *or as the case may be*].

Or, that the plaintiff has conveyed his interest in the said mortgage [*or* right to redeem] to one *I. J.* [*or* that I have conveyed or assigned to *H. L.*, by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [*or as the case may be*].

(*Signed*) *C. D.*,
Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B.

against

C. D., E. F., and G. H.

Interrogatories on behalf of the above-named *A. B.* [*or C. D.*] for the examination of the above-named [*E. F.* and *G. H. or A. B.*].

1. Did not, &c.

2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered

The defendant *G. H.* is required to answer the interrogatories numbered

Act XIV. of 1882.

No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. 18 .

A. B.
against
C. D.

Take notice that the plaintiff [*or* defendant] requires you to produce for his inspection the following documents referred to in your plaint [*or* written statement, *or* affidavit], dated the day of 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [*or* the defendant].

To Z.,
Pleader for the defendant [*or* plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(Title.)

To

WHEREAS your attendance is required to on behalf of the in the above cause, you are hereby required [personally to appear before this Court] on the day of 18 , at the hour of A. M. [and] to bring with you or to send to this Court .

A sum of Rs. , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1.) If you are summoned only to produce a document, and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2.) If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court this day of 18 .

[L. S.]

Judge.

No. 126.

Another Form.

No of Suit.

IN THE COURT OF AT

Plaintiff.

To Defendant.

[Name, description and address.]

You are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff [*or* the defendant] in the above-mentioned suit, and to produce [*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*], and you are not to depart thence until you have been examined [*or* have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(*Title.*)

Claim for

THIS cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the , the sum of Rs. , with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of Suit.

PLAINTIFF.				DEFENDANT.			
	Rs.	A.	P.		Rs.	A.	P.
1 Stamp for plaint ...				Stamp for power			
2. Do. for power ...				Do. petition			
3. Do. exhibits ...				Pleader's fee			
4. Pleader's fees on Rs. ...				Subsistence for witnesses ...			
5. Translation-fee ...				Service of process			
6. Subsistence for witness for attendance				Translation-fee			
7. Commissioner's fee ...				Commissioner's fee			
8. Service of process ...							
9. &c.							
TOTAL ...				TOTAL ...			

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(*Title.*)

IT is ordered that it be referred to the Registrar [*or* Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [*or* Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [*or* Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as afore-

Act XIV of 1882.

said by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said lien] be sold with the approbation of the Registrar [*or* Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE* FOR FORECLOSURE.

(*Title.*)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum ,, which was, on the day of last, declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of :

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(*Title.*)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[*After the first paragraph the order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law, and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.*]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that, if the *Registrar* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. *E. F* be Receiver in the suit [*or* proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar [and shall give security by bond for the due performance of his duties to the amount of rupees].

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* In No. 129, substitute the words "Decree absolute" for "Final Decree" in places to which the Transfer of Property Act, 1882, extends—See Act IV. of 1882, s. 87, and *supra*, s. 3.

9. And it is further ordered that, if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,— Act XIV. of 1882.

(*a*) an inquiry what immoveable property the deceased was seized of, or entitled to, at the time of his death;

(*b*) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;

(*c*) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise, the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the Registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered that this suit [*or* matter] stand adjourned for making final decree to the day of .

[*Such part only of this order is to be used as is applicable to the particular case.*]

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per centum per annum, from the day of to the day of , amounting together to the sum of Rs. .

2. Let the Registrar [*or* Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(*a*)—The costs of the plaintiff to Mr. , his attorney [*or* pleader], and the costs of the defendant to Mr. , his attorney [*or* pleader].

(*b*)—And (*if any debts are due*) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

Act XIV of 1882

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs when taxed.

2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

(*a*)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.

(*b*)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.

(*c*)—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(*Title.*)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette, &c.*

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership;

2. An account of the debts and liabilities of the said partnership;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit, and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good-will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No.

A. B., of

against

C. D., of

IT is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[*Or*, And that the remainder of the said sum of Rs. be paid to the said plaintiff [*or* defendant] in part-payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [*or* plaintiff] do, on or before the day of , pay to the plaintiff [*or* defendant] the sum of Rs. , being the balance of the said sum of Rs. due to him which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

CERTIFIED that no [*or* partial, *as the case may be, and, if partial, state to what extent*] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

Act XIV. of 1882.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

To

WHEREAS has made application to this Court for execution of decree in Civil Suit No. 18 , this is to give you notice that you are to appear before this Court on the day of 18 , either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered by decree of this Court, passed on the day of 18 , in Suit No. of 18 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid.

DECREE.			
Principal			
Interest			
Costs			
Costs of decree . . .			
Interest thereon . . .			
Total of attachment .			
TOTAL .			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said , and unless the said shall pay to you the said sum of Rs. , together with Rs. , the costs of this attachment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &c.

Section 263 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS , in the occupancy of , has been decreed to , the plaintiff in this suit: you are hereby directed to put the said in possession of the same; and you are hereby authorized to remove any person "bound by the decree"* who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in favour of for Rs. : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, , to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, , and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

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* The words quoted have been inserted by the Civil Procedure Code Amendment Act (VII. of 1888), s. 64.

Act XIV. of 1882.

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

Defendant, and to , Manager of Company.

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely, , or from receiving payment of any dividends thereof; and you , the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(*Title.*)

To , defendant,

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

To

SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (*here state how the*

money is supposed to be in the hands of the person addressed, on what account, &c.), I request that you will hold the said money subject to the further order of this Court. Act XIV. of 1882.

I have the honour to be,
SIR,
Your most obedient servant,

Dated the day of 18 .

[L. S.]
Judge.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &c., OF MONEY, &c., IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .

A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18 , passed on the day of 18 , in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to , and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the bailiff of the Court, by public auction, in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof, to satisfy the said decree shall be paid over to the said , and the remainder, if any, shall be paid to you, the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS has made application to this Court for the removal of attachment on , placed at your instance in execution of the decree in Civil Suit, No. of 18 , this is to give you notice to appear before this Court on , the day of 18 , either in person or by a pleader of the Court duly instructed, to support your claim as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

Act XIV. of 1882.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation,* the property attached under a warrant from this Court, dated the day of 18 , in execution of a decree in favour of , in Suit No. of 18 , or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of ,

against

C. D., of .

To

WHEREAS has been the purchaser at a sale by auction in execution of the decree in the above suit of , now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of ,

against

C. D., of

To ,

and to .

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you

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* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by s. 287 to be specified.

to you , that is to say , it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said Act XIV. of 1882.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

and , Manager of Company.

WHEREAS has become the purchaser, at a public sale in execution of the decree, in the above suit of certain shares in the above Company, that is to say, of , standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 149.

ORDER CONFIRMING SALE OF LAND, &c.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

WHEREAS the following land [*or* immoveable property] was, on the day of 18 , sold by the bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed, and no application has been made [*or* objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

Act XIV. of 1882.

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

THIS is to certify that has been declared the purchaser at sale by public auction, on the day of 18 , of , in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of the decree in Civil Suit, No. of 18 ; and whereas such land is in the possession of , you are hereby ordered to put the said , the certified purchaser, as aforesaid, into possession of the said , and, if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

To

Collector of

SIR,

IN answer to your communication, No. , dated , representing that the sale in execution of the decree in this suit of , and lying within your district paying revenue to Government, is objectionable, I have the honour to inform you that you are

authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of . . Act XIV. of 1882.

I have the honour to be,

SIR,

Your obedient servant,

[L. S.]

Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS it appears to the Court that has, without just cause, resisted [*or* obstructed] the execution of the decree of the Court, passed against on the day of 18 , in Civil Suit, No. of 18 , whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in No. of 18 , dated 18 , to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and, unless the said defendant shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Principal . . .	
Interest . . .	
Costs . . .	
Execution . . .	
TOTAL .	

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

Act XIV. of 1882.

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF

B. No. - 18 .

A. B. v. *C. D.*

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim for, *&c.*].

To Mr. *X. Z.*,
the Plaintiff's Pleader.

Z.,
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the examination on interrogatories [*or* viva voce] of such witnesses you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; you are hereby appointed Commissioner for the purpose of [process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect will be issued by this Court on your application].*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

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* Not necessary where the commission goes to another Court.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved, to the satisfaction of the Court, that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit, or, if judgment be given against , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has proved, to the satisfaction of the Court, that the defendant in the above suit , these are to command you to call upon the said defendant

Act XIV. of 1882.

, on or before the day of , either to furnish security for the sum of rupees to produce and place at the disposal of this Court, when required , or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security; and you are further ordered to attach the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security, which has failed to do ; these are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

Defendant.

IT is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say,

to which the defendant is entitled, subject to any claim of the said , and the said , is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any persons whomsoever. Act XIV. of 1882.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

Defendant.

IT is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]
Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

IT is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands belonging to the said defendant, *or* debts, *as the case may be, describing them*], and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

Act XIV. of 1882.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To Defendant, and to

Manager of Company.

IT is ordered that , the defendant, be, and hereby, prohibited and restrained, until the further order of the Court, from making any transfer of shares, being in the aforesaid Company or from receiving payment of any dividends thereof, and you , Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.]

Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by , Pleader of [*or* Counsel for] the plaintiff, *A. B.*, and upon reading the petition of the said plaintiff in this matter, filed [this day] [*or* the plaint filed in this cause on the day of ; *or* the written statement of the said plaintiff, filed on the day of], and upon hearing the evidence of and in support thereof [*if after notice and defendant not appearing: add*, and also the evidence of as to service of notice of this motion upon the defendant, *C. D.*]. This Court doth order that an injunction be awarded to restrain the defendant, *C. D.*, his servants, workmen, and agents, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmonger's Street, Hindupur, in the taluq of , and from selling the materials whereof the said house is composed, until the hearing of this cause, or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:*—] to restrain the defendants and from parting with, out of the custody of them or any of them, or endorsing, assigning, or negotiating, the promissory note [*or* bill of exchange] in question, dated on or about the , *&c.*, mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion, until the hearing of this cause, or until the further order of this Court.

[*In copyright cases*] to restrain the defendant, *C. D.*, his servants, agents, or workmen, from printing, publishing, or vending a book, called , or any part thereof, until the, *&c.*

[*Where part only of a book is to be restrained*] to restrain the defendant, *C. D.*, his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint [*or* petition and evidence, *&c.*] mentioned to have been published by the defendant as hereinafter specified, namely,

that part of the said book which is entitled ' , and also that part which is entitled [*or* which is contained in page to page both inclusive], until the , *&c.*

[*In Patent cases*] to restrain the defendant, *C. D.*, his agents, servants, and workmen, from making or vending any perforated bricks [*or as the case may be*] upon the principle of the inventions in the plaintiff's plaint [*or* petition, *&c.*, *or* written statement, *&c.*] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, *&c.*

[*In cases of trade-marks*] to restrain the defendant, *C. D.*, his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, *&c.*] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the, *&c.*

[*To restrain a Partner from, in any way, interfering in the business*] to restrain the defendant, *C. D.*, his agents, and servants, from entering into any contract, and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security, in the name of the partnership-firm of *B. & D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B. & D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise, or undertaking, until the, *&c.*

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF AT

A. B., of

against

C. D., of

TAKE notice that I, *A. B.*, intend to apply, at the sitting of the Court at aforesaid, on the day of , for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, *or* from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, *or as the case may be*].

Dated this day of 18 .

To C. D.

A. B.

[*N. B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.*]

Act XIV. of 1882.

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby [subject to your giving security to the satisfaction of the *Registrar*] appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of

A. B., of
against
C. D., of

KNOW all men by these presents, that we, *I. J.*, of, &c., and *K. L.*, of, &c., and *M. N.*, of, &c., are jointly and severally bound to *G. H.*, *Registrar* of the Court of , in Rs. , to be paid to the said *G. H.*, or his attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors, and administrators jointly and severally by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert the object of suit*].

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now, the condition of this obligation is such that, if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said *O. P.* [*or, as may be*] at such periods as the said Court shall appoint, and shall duly pay the balances which shall, from time to time, be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.
K. L.
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(*Title.*)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff, and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing, and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

Act XIV of 1882.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.

Defendant.

To

[*Here enter the defendant's name, description, and address.*]

WHEREAS [*here enter the plaintiff's name, description, and address*] has instituted a suit in this Court against you under Chapter XXXIX. of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest], due to him as the payee [*or* endorsee] of a bill of exchange [*or* hundi, *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court, supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundi, or promissory note, and all endorsements upon it.*]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c., as in Register.*) Plaintiff—Appellant.

(*Name, &c., as in Register.*) Defendant—Respondent.

[*Name of Appellant*] [plaintiff *or* defendant] above-named appeals to the High Court at [*or* District Court at , *as the case may be*] against the decree of in the above suit, dated the day of , for the following reasons, namely [*here state the grounds of objection*].

No. 174.

REGISTER OF APPEALS.

Section 548 of the Code of Civil Procedure.

COURT (*OR* HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES in the year 18 .

Date of Memorandum.	No. of Appeal.	APPELLANT.				RESPONDENT.				DECREE APPEALED FROM.					APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of Abode.		Name.	Description.	Place of Abode.		Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.		Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

Act XIV. of 1882.

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant*, v. , *Respondent*.

APPEAL from the of the Court of , dated the day of 18 .

To *Respondent*.

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 18 , has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

[*L. S.*]

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant*, v. , *Respondent*.

APPEAL from the of the Court of , dated the day of 18 .

Memorandum of Appeal.

, *Plaintiff*.

, *Defendant*.

Plaintiff [*or* defendant] above-named appeals to the Court at against the decree of in the above suit, dated the day of 18 , for the following reasons, namely:—

[*here state the reasons*].

This appeal coming on for hearing on the day of 18 , before , in the presence of for the appellant, and of for the respondent, it is ordered—

[*here state the relief granted*].

The costs of this appeal, amounting to , are to be paid by

The costs of the original suit are to be paid by

GIVEN under my hand this day of 18 .

[L. S.]

Judge.

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 587 of the Code of Civil Procedure.

HIGH COURT AT .

REGISTER OF APPEALS FROM APPELLATE DECREES.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of Abode.	Name.	Description.	Place of Abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

Act XIV. of 1882.

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Plaintiff*, v. , *Defendant*.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF AT

A. B., of

against

C. D., of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, *A. B.* [*or C. D.*], have hitherto employed as my pleader *G. H.*, of , in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is *J. K.*, of

A. B. [*or C. D.*]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

HOURS of attendance at the office of the Registrar [*place of office*] from *ten* till *four*, except on [*here insert the day on which the office will be closed*], when the office will be closed at *one*.

ACT XV. OF 1882.

PRESIDENCY SMALL CAUSE COURTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MARCH 1882.

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras, and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. Commencement.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882;" and it shall come into force on the first day of July 1882.

But nothing herein contained shall affect the provisions of the Army Act,* section 151, or the rights or liabilities of any person under any decree passed before that day.

Repeal of enactments.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made, and securities given, under any of the said enactments, shall, so far as may be, be deemed to have been respectively constituted, made, and given under this Act.

References in previous Acts.

All references to any enactment hereby repealed, made in Acts passed prior to the said day, shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

Amendment of Acts.

3. In Act No. XXIII. of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII., 1847," the words and figures, "The Presidency Small Cause Courts Act, 1882, Chapter VIII.," shall be substituted; the words, "as provided by the said Act," shall be repealed; and for each of the expressions, "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners," the words, "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures, "Chapter XXXIX.," the words and figures, "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

"Small Cause Court" defined.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras, or Bombay, as the case may be.

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* In s. 1, second paragraph, the figures "1881," being repealed by Act XII. of 1891, have here been omitted.

Act XV. of 1882.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras, and Bombay, a Court, to be called the Court of Small Causes of Calcutta, Madras, or Bombay, as the case may be.

Court to be deemed under superintendence, &c., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be, within the meaning of the Letters Patent respectively, dated the 28th day of December 1865, for such High Courts, and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th and 25th of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

Appointment, suspension, and removal of Judges.

7. Subject to the control of the Governor-General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: ~~Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.~~

The Local Government may, by a like notification, suspend, and, with the previous sanction of the Governor-General in Council, remove any Judge so appointed.

All barristers who, when this Act comes into force, are, or are acting as, Judges of the Small Cause Court, shall, for the purposes of this section, be deemed to be advocates of a High Court.

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Power to make rules.

9. ~~Except as otherwise provided by this or any other law for the time being in force,~~ the Small Cause Court may, with the ~~previous sanction of the High Court,~~ make rules to provide, in such manner as it ~~thinks fit,~~ for all matters not specially provided for by this Act, and for the exercise, by one or ~~more of its Judges~~, of any powers conferred on the Small Cause Court by this Act, or by any ~~other law for the~~ time being in force.

Chief Judge to distribute business of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Procedure in case of difference of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

pointment of Chief Judge to perform the duties of Chief Judge &
point some other duly qualified person to act as a Judge of the
aid Court until the Chief Judge has returned from such abs
during any absence of a Judge of the said Court the Local Govt
ppoint a duly qualified person to act as a Judge of the said
every person so appointed shall be authorised to perform the du
a Judge of the said Court until the return of the absent Judge o
ntil the Local Govt. shall see cause to cancel the appointment
ch acting Judge.

Act # I of 1895 s. 4.

9. (1) The High Court may from time to time, by rules having the fo
f law, —

(a) prescribe the procedure to be followed & the practice to be observed
the Small Cause Court either in preperssession of or in
addition to any provisions which were prescribed with respe

the thirty first day of December 1894, and
any other enactment for the time being in force, &

(b) Cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act, or any other enactment for the time being in force.

(2) The law, & any rules & declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the 31st day of Dec. 1894 shall be in force, unless & until cancelled or varied by rules made by the High Court under this section.

Act I of 1895 s. 5.

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs, and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties of a ministerial nature, as the Chief Judge may, from time to time, by rule direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

Judge or other officer not to practise or trade.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakíl, or other legal practitioner, or be concerned, either on his own account, or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting, or concerned, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament, or Act of any British Indian Legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court, shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Act XV. of 1882.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Local limits of jurisdiction of Court.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees; and

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside or carry on business, or personally work for gain, within such local limits; or

(*c*) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor-General in Council or the Local Government, or by the Governor-General or a Governor, or by any Member of the Council of the Governor-General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor-General in Council or the Local Government;

(*c*) suits concerning any Act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

[illegible]ore the first hearing of [illegible]
[illegible] alleged on a cause of action arising either wholly or in part w[illegible]
local limits of the jurisdiction of the Court to abandon the suit as
any defendant who does not reside or carry on business or persona[illegible]
for gain within such local limits, & to sue for a decree against [illegible]
defendants only who do so reside carry on business or person[illegible]
for gain.

Inserted by Act I of 1895 s. 8.

any stage of the proceedings return the plaint to be
a Court having jurisdiction to determine the question. Whe
urt so returns a plaint it shall comply with the provisions
cond para. of s. 57 of the Code of Civil Procedure & make su
ith respect to costs as it may think just & the Court shall
urposes of the Indian Limitation Act 1877, be deemed to have
nable to entertain the suit by reason of defect of jurisdictio
hen a plaint so returned is afterwards presented to a High
dit shall be given to the plaintiff for the amount of the cour
id in the Small Cause Court in respect of the plaint in the
ny fees which according to the practice of the High Court are
ited to the Govt.

Inserted by Act I of 1895 s. 9.

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to, or interest in, immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(*m*) suits for compensation in respect of collisions on the high seas;

(*n*) suits for compensation for the infringement of a patent, copyright, or trade-mark;

(*o*) suits for a dissolution of partnership, or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery, or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits for possession of a hereditary office;

(*u*) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*v*) suits on any judgment of a High Court;

(*w*) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Court may, by consent, try suits beyond pecuniary limits of jurisdiction.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement* in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and against officers of Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

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* As to additional fee payable on the filing of such agreement, see s. 71, *infra*.

Act XV. of 1882.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if, in such suit, the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than ~~five~~ thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.*

CHAPTER V.

PROCEDURE IN SUITS.

Portions of Civil Procedure Code extending to Court.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act:

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit. "Subject to such control, the Court may modify or cancel any notification under this section as occasion may appear to it to require."†

No written statement except in cases of set-off.

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

Return of documents admitted in evidence.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period, and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

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* Or to any suit under s. 47 of this Act, which see.

† The words quoted have been added by Act X. of 1888, s. 2. "Any declaration which has been notified under the proviso to s. 23 of the Presidency Small Cause Courts Act, 1882, before the day on which this Act is passed, and which was in force immediately before that day, shall, subject to the powers of the Court under that section, be construed, so far as may be, as referring to the schedule which has been substituted by the last foregoing sub-section for the second schedule to that Act."—Act X. of 1888, s 2, cl. 3.

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: Provided also that no document shall be returned which, by force of the decree, has become void or useless. Act XV. of 1882.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may, in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may, in its discretion, order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And, when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amoun payable thereunder, be enforced by the person in whose favour it is made agains the person against whom it is made as if it were a decree of the Court.

Decree-holder to accompany officer executing warrant.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Discharge of judgment-debtor on sufficient security.

29. Whenever any judgment-debtor, who has been arrested, or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged, or the property to be released.

Court may in certain cases suspend execution of decree.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty, or other sufficient cause, to pay the amount

Act XV. of 1882. of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may from time to time, for such time, and upon such terms as it thinks fit, suspend the execution of such decree, and discharge the debtor, or make such order as it thinks fit.

Execution of decree of Small Cause Court by other Courts.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(*a*) in the case of execution against immoveable property situate within such local limits—to the High Court;

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred.

The procedure prescribed by the Code of Civil Procedure* for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Minors may sue in certain cases as if of full age.

32. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Power to delegate non-judicial duties.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge.

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Proviso.

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute all decrees with the same powers as a Judge.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

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* See Act XIV. of 1882, ch. xix.

Chapter VI.

New trials & appeals.

37. Save as otherwise provided by this chapter or by any other enactment for the time being in force, every decree & order of the Small Cause Court in a suit shall be final & conclusive.

38. Where a suit has been contested, the S.C. Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under S22 of the Code of Civil Procedure) order a new trial to be held, or alter, set aside or reverse the decree or order upon such terms as it thinks reasonable & may, in the meantime, stay the proceedings.

Explanation. Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

39. In any suit instituted in a S.C. Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant within eight

eight days after the service of the summons on him which
period shall last expire, apply ex parte on an affidavit setting forth
the facts on which he relies for his defence to a Judge of the High Court
for an order removing the cause into the High Court.
(2) Unless the Judge is of opinion that the application has
been made solely for the purpose of delay, the applicant shall
be entitled to such order as of right but it shall be lawful for the
Judge, if he shall think fit, in by such order to require the
applicant to give security to a reasonable amount to be specified
in the order for the payment of any costs which may become payable
by him to the plaintiff in respect of the said suit. Such Judge may also,
if he shall think fit declare that the removal directed by such order
shall be conditional upon the completion of such security within a reasonable
time to be prescribed in the order.
(3) If the applicant fail or refuse to complete the required security (if any) within the
prescribed time (if any) the said order shall be discharged & the suit shall proceed in the
S. C. Court as if such order had never been made.
(4) If the plaintiff in any case which has been removed under this section into
the High Court has abandoned a portion of his claim in order to be able to bring the suit
within the jurisdiction of a S. C. Court, he shall be permitted to recover the portion
of his claim so abandoned.

CHAPTER VI.

NEW TRIALS AND RE-HEARING.

Judgments and orders of Court final.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit

Power to order new trial in Small Cause Court.

(not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Application for re-hearing in High Court.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply* to the High Court for an order that such suit may be re-heard in the High Court.

Such application shall be supported by affidavits, and in case the applicant has appeared in the Small Cause Court by advocate, vakíl, attorney, or pleader, by a certificate from such advocate, vakíl, attorney, or pleader, that, in his opinion, there are good grounds for re-hearing the suit; and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546, and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

Procedure at re-hearing.

39. On the day fixed under section 38, or on any other day to which the re-hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

Execution of decree of High Court.

40. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court, or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Summons against person occupying property without leave.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and of which the annual value at a rack-rent does not exceed one thousand rupees,

* For fee on such applications, see s. 71, *infra*.

Act XV. of 1882.

as the tenant, or by permission of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under, or by assignment from, him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply* to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Service of summons.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure† for the service of a summons on a defendant.

Order for possession.

43. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Such order to justify bailiff entering on property, and giving possession.

44. Any such order shall justify the bailiff to whom it is addressed in entering, after the hour of six in the morning, and before the hour of six in the afternoon, upon the property named therein, and such assistants as he thinks necessary, and giving possession of such property to the applicant; and

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution, or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect, or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a

Occupant may sue for compensation.

suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect, or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved, but the amount of the compensation assessed by the Court

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* For fee on such applications, see s. 71, *infra*.

† See Act XIV. of 1882, ss. 72 to 92.

does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff. Act XV. of 1882.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not, at the time of applying for such order as aforesaid, entitled to the possession of such property.

Liability of applicant obtaining order when not entitled.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass.

47. Whenever, on an application being made under section 41, the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring suit against applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Proceedings to be regulated by Code of Civil Procedure.

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

CHAPTER VIII.

DISTRESSES.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay. But nothing contained in this chapter applies—

Local extent of chapter.

Saving of certain rents.

(*a*) to any rent due to Government;

(*b*) to any rent which has been due for more than twelve months before the application mentioned in section 53.

Act XV. of 1882.

Appointment of bailiffs and appraisers.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Security to be given by appointees.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

Application for distress-warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly-constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue of distress-warrant.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal, and returnable within six days, to the effect of the form (marked B) contained in the same schedule addressed to any one of such bailiffs.

The Judge or Registrar may, at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Time for distress.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

What places bailiff may force open.

56. The bailiff directed to make the distress may force open any stable, out-house, or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which, by the usage of the country, is considered private.

Property which may be seized.

57. In pursuance of the warrant aforesaid, the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant, and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

(*a*) things in actual use; or

(*b*) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or

(*c*) the debtor's necessary wearing apparel; or

(*d*) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent. Act XV, of 1882.

Impounding distress.

59. On seizing any property under section 57, the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.
Notice of intended appraisement and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Copies of inventory and notice to be filed.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly-constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant, or release such article accordingly, upon such terms as he thinks just;

Application to discharge or suspend warrant.

and any of the Judges of the said Court may, in his discretion, give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it, and attending the issue and execution of the warrant, shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

Claim to goods distrained made by a stranger.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons, and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section 60 or section 61, the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

Power to award compensation to debtor or claimant.

and may, for that purpose, make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Act XV. of 1882.

Power to transfer to High Court cases involving more than Rs. 1,000.

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

Appraisement.

Notice of sale.

64. In default of any order to the contrary by a Judge of Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

Sale.

Application of proceeds.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress, and then in satisfaction of the debt; and the surplus (if any) shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

Costs of distresses.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

Account of costs and proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter. Act XV. of 1882.

Bar of distresses except under this chapter.

68. No distress shall be levied for arrears of rent, except under the provisions of this chapter.

Penalty for making illegal distresses.

And any person, except a bailiff appointed under section 54, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

Reference when compulsory.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment, or give judgment contingent upon such opinion.

Security to be furnished on such reference by party against whom contingent judgment given.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court, and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

If no such security given, party to be deemed to have submitted to judgment.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

CHAPTER X.

FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(*a*) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

Act XV. of 1882.

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit and every application under ~~section 38 or~~ section 41; and no such plaint or application shall be received until *such fee has been paid.*

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

Fees for processes.

72. *The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the* issue, in any suit or in any proceeding under Chapter VII. of this Act, of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

Repayment of half fees on settlement before hearing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Fees and costs of poor persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made by poor persons, and may issue processes on behalf of such persons, without payment, or on a part-payment, of the fees mentioned in sections 71 and 72.

Power to vary fees.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections 71 and 72:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of employing legal practitioners.

76. The expense of employing an advocate, vakíl, attorney, or other legal practitioner, incurred by any party, shall not be allowed as costs in any suit, or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5, and 25 of Court Fees Act, 1870, saved.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Power to fine officers.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of

misconduct or neglect in the performance of the duties of his office; and such fine may be deducted from his salary. Act XV of 1882.

Default of bailiff or other officer in execution of order or warrant.

79. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, who is employed as such in the execution of any order or warrant, loses, by neglect, connivance, or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance, or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Extortion or default of officers.

80. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Court empowered to summon witnesses, &c.

81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Enforcement of order.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

Procedure of Court in certain cases of contempt.

83. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and, in default of payment of such fine, with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

Record in such cases.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

Act XV. of 1882.

85. If the Court considers that a person accused of any offence referred to in section 83, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section 83.

Such Magistrate shall deal with the accused person in the manner provided by the Code of Criminal Procedure,* and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

86. When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

Discharge of offender on submission or apology.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions, or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 83 or section 85.

Imprisonment or committal of person refusing to answer or produce document.

88. Any person deeming himself aggrieved by an order under section 83 or section 87 may appeal to the High Court, and the provisions of the Code of Criminal Procedure,† relating to appeals, shall, so far as may be, apply to appeals under this section.

Appeal from orders under sections 83 and 87.

CHAPTER XIII.

MISCELLANEOUS.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Persons by whom process may be served.

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* See Act X. of 1882, Ch. XXXV. and s. 3.
† See Act X. of 1882, Ch. XXXI. and s. 3.

Registers and returns.

90. The Small Cause Court shall keep such registers, books, and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

Court to furnish records, &c., called for by Local Government or High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns, and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Certain persons exempt from arrest by Court.

93. The Governor-General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

Place of imprisonment.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Tender in suit for anything done under Act.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Limitation of prosecutions.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

Act XV. of 1882.

THE FIRST SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March 1774.	Charter of the Supreme Court at Fort William.	Clause 21.
26th December 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

B.—Acts of the Governor-General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX. of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	So much as has not been repealed.
XX. of 1857 ...	To amend Act IX. of 1850	The whole.
XXVI. of 1864 ...	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts	So much as has not been repealed.
I. of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X. of 1877 ...	The Code of Civil Procedure	Section 8, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI. of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.*

Act XV. of 1882.

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2,† Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23, and 24, and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications, and Acts, except section 37, clause (*b*), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42, and section 44, rule 2.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*b*), sub-clause (iv.), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65 and 66.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112, and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Sending for Records, and Production, &c., of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141, 141A, 142, 142A, sub-section (*1*), 143, and 145.

CHAPTER XI.—Settlement of Issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170, and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive), and the second paragraph of section 193.

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees,‡ sections 229, 229A, and 229B, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

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* This schedule has been substituted by Act X. of 1883, s. 2, cl. 2.

† As to s. 3, see Act XIV. of 1882, s. 8.

‡ As to ss. 223 and 225, see Act XIV. of 1882, s. 8.

Act XV. of 1882.

THE SECOND SCHEDULE—(*concluded*).

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

CHAPTER XXI.—Of the Death, Marriage, and Insolvency of Parties.
CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER XXIII.—Of Payment into Court.
CHAPTER XXIV.—Of Requiring Security for Costs.
CHAPTER XXV.—Of Commissions, except section 396.
CHAPTER XXVII.—Suits by or against Government or public officers.
CHAPTER XXVIII.—Suits by Aliens, and by and against Foreign and Native Rulers, except section 433, sub-sections (1), (2), (4), and (5).
CHAPTER XXIX.—Suits by and against Corporations and Companies.
CHAPTER XXX.—Suits by and against Trustees, Executors, and Administrators.
CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.
CHAPTER XXXII.—Suits by and against Military Men.
CHAPTER XXXIII.—Interpleader.
CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.
CHAPTER XXXV.—Interlocutory Orders, sections 498, 499, 500, and 502.
CHAPTER XXXVI.—Appointment of Receivers, section 503.
CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.
CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause *b*, as relates to immoveable property.
* CHAPTER XLVI.—Of Reference to, and Revision by, High Court.
CHAPTER XLIX.—Miscellaneous.

THE THIRD SCHEDULE.

FORMS.

A.

[*See section 53.*]

In the Small Cause Court for

A. B. (Plaintiff),
versus
C. D. (Defendant).

A. B. of , in the town of , maketh oath [*or* affirms] and saith that *C. D.* , of , is justly indebted to in the sum of Rs. for arrears of rent of the house and premises No. , situated at , in the town of , due for months, to wit, from to , at the rate of Rs. per mensem.

Sworn [*or* affirmed] before me the day of 188 .

Judge [or *Registrar*].

* As to Ch. XXXIX., see Act XIV. of 1882, s. 538.

THE THIRD SCHEDULE—(*continued*).

FORMS—(*continued*).

B.

[*See section 54.*]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No. , in the town of , for the sum of Rs. and the costs of the distress, according to the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day of 188 .

(*Signed and sealed.*)

To *E. F., Bailiff and Appraiser.*

C.

[*See section 59.*]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(*State particulars of property seized.*)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of Rs., being the amount of months' rent due to *A. B.* at last, and that, unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day of 188 .

(Signed) E. F.,

Bailiff and Appraiser.

To *C. D.*

D.

[*See section 64.*]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the day of , under the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or* upon on your behalf, *as the case may be*] under date the , and that the said property will be sold on the [*two clear days at least after the date of the notice*] at pursuant to the provisions of the said Act. Dated this day of 188 .

(Signed) *E. F.*,

G. H.,

Bailiffs and Appraisers.

To *C. D.*

Act XV. of 1882.

THE THIRD SCHEDULE—(*concluded*).

FORMS—(*concluded*).

E.

[*See section 66.*]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.	Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs. Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5	0 4 0	0 8 0	0 8 0	1 4 0
5 „ 10	0 8 0	0 8 0	1 0 0	2 0 0
10 „ 15	0 8 0	0 8 0	1 8 0	2 8 0
15 „ 20	0 8 0	1 0 0	2 0 0	3 8 0
20 „ 25	0 12 0	1 0 0	2 8 0	4 4 0
25 „ 30	1 0 0	1 0 0	3 0 0	5 0 0
30 „ 35	1 0 0	1 0 0	3 8 0	5 8 0
35 „ 40	1 0 0	1 8 0	4 0 0	6 8 0
40 „ 45	1 4 0	2 0 0	4 8 0	7 12 0
45 „ 50	1 8 0	2 0 0	5 0 0	8 8 0
50 „ 60	2 0 0	2 0 0	6 0 0	10 0 0
60 „ 80	2 8 0	2 8 0	6 8 0	11 8 0
80 to 100	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	3 0 0	3 0 0	7 per centum	... ...

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpœnaed, in which case each subpœna for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE FOURTH SCHEDULE.

[*See section 72.*]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

Act XVI. of 1882.

ACT XVI. OF 1882.

THE JHANSI ENCUMBERED ESTATES ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 19TH MAY 1882.

An Act to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

Preamble.

WHEREAS many zamíndárs in "the territory now comprised in the districts of Jhánsí, Jalaun, and Lalatpur"* of the North-Western Provinces are in debt, and their immoveable property is subject to encumbrances, and it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title:

Commencement.

1. This Act may be called the Jhánsí Encumbered Estates Act, 1882:

and it shall come into force on the passing thereof.

Interpretation-clause.

"land:"

"zamíndár:"

"Sír-land:"

"public debt:"

"private debt."

2. In this Act—

"land" means land assessed to revenue:

"zamíndár" means a proprietor of land or of any share in land, and includes an ubáridár:

"sír-land" means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co sharer, or treated as such in the distribution of profits or charges among the co-sharers

"public debt" means a debt due or liability incurred to Government: and

"private debt" means any debt or liability other than a public debt.

CHAPTER II.

APPOINTMENT OF OFFICERS.

Power to appoint a special Judge.

3. The Local Government may, from time to time, by notification in the official Gazette, appoint, for any local area in "the territory now comprised in the districts of Jhánsí, Jalaun, and Lalatpur,"* a special Judge, who shall exercise the powers conferred, and perform the duties imposed, on him by this Act.

* In the preamble and in s. 3 the words quoted have been substituted for the words "the Jhánsí Division," by Act XX. of 1890, s. 6 (*1*).

Power to suspend or remove special Judge.

The Local Government may, at any time, by a like notification, suspend or remove any special Judge so appointed. Act XVI. of 1882.

CHAPTER III.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

Application for benefit of Act.

4. (*1*) At any time within twelve months after a special Judge is appointed for any local area, any zamíndár owning land in that area may apply in writing to "the Commissioner of the Allahabad Division,"* stating that the zamíndár is subject to, or that his immoveable property or any part thereof is encumbered with private debts, and requesting that the provisions of this Act be applied to him.

(*2*) The like application may be made with respect to any such zamíndár by an officer appointed for the purpose by the Local Government.

(*3*) Provided that, where the zamíndár is a disqualified proprietor within the meaning of section 194 of the North-Western Provinces Land-revenue Act, 1873,† the application shall be made—

(*a*) if his property is under the superintendence of the Court of Wards—by the manager of his property, with the consent of that Court; and

(*b*) if his property is not under such superintendence—by "the Collector" ‡ of the district in which the property is situate.

Power to extend time for making applications.

(*4*) The Local Government may, from time to time, by notification in the official Gazette, extend the time prescribed for making applications under this section.

Order to inquire.

5. When any such application is made in the case of any zamíndár, the Commissioner shall direct an inquiry to be made by the special Judge—

(*a*) into the nature and amount of the zamíndár's private debts, and

(*b*) into the sufficiency of his property, whether moveable or immoveable (exclusive of his proprietary rights in land, and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure§), to discharge his private debts.

Written statement to be submitted.

6. (*1*) When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the special Judge a written statement containing, so far as may be practicable,—

(*a*) such particulars as the special Judge may require respecting the private debts to which the zamíndár is subject, or with which his immoveable property or any part thereof is encumbered;

(*b*) the nature and value of the zamíndár's property (exclusive of his proprietary rights in land, and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure§); and

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* In s. 4 (*1*) the words quoted have been substituted for the words "the Commissioner of the Jhánsí Division," by Act XX. of 1890, s. 6 (*1*).

† See Act XIX. of 1873, Vol. I., p. 1124.

‡ In s. 4, cl. 3 (*b*), the words quoted have been substituted for the words, "the Deputy Commissioner" by Act XX. of 1890, s. 6 (*1*).

§ These references to Act X. of 1877 should now be read as applying to s. 266 of Act XIV. of 1882.—See s. 3 of the latter Act.

Act XVI. of 1882.

(*c*) the names and residences of his creditors, so far as they are known to, or can be ascertained by, the zamíndár.

Verification of statement.

(*2*) The statement must be verified by the applicant or by some other competent person, in the manner required by law* for the verification of plaints; and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

Proviso.

(*3*) Provided that, when the application is made by an officer appointed under section 4, clause (*2*), or by "the Collector,"† it shall not be necessary to verify the statement; but the zamíndár shall, so far as may be practicable, within a period to be fixed by the special Judge, furnish such information regarding the matters mentioned in clauses (*a*), (*b*), and (*c*), of this section as the Judge may require.

CHAPTER IV.

PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE.

Publication of notice to claimants against zamíndár.

7. (*1*) When the statement or information referred to in section 6 has been submitted or furnished, the special Judge shall publish in the official Gazette a notice in the vernacular language of the district calling upon all persons having claims against the person or the property of the zamíndár by or with respect to whom the application was made under section 4 to present to the special Judge, within two months from the date of the publication, a written statement of their claims.

Copies of notice to be exhibited.

(*2*) The special Judge shall also cause copies of the notice to be exhibited at his own office, at the offices of "the Commissioner of the Allahabad Division"‡ and "the Collector"§ of the district in which the land of the zamíndár is situate, and at some conspicuous place in the village where the zamíndár resides.

Provision for admission of claims within further period of two months.

(*3*) The statement must be presented within the period specified in the notice, unless the claimant satisfies the special Judge that he had sufficient cause for not presenting the statement within that period, in which case the special Judge may receive the statement within a further period of two months from the expiration of the period so specified.

Consequences of notice.

8. After the publication of the notice, the following consequences shall ensue (namely):—

(*a*) all proceedings pending at the date of the publication in any civil or revenue Court in British India in respect of any private debt to which the zamíndár is subject, or with which his immoveable

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* See the Code of Civil Procedure (Act XIV. of 1882), s. 52.

† In s. 6 (*2*) the words quoted have been substituted for the words, "the Deputy Commissioner," by Act XX. of 1890, s. 6 (*1*).

‡ These quoted words have been substituted for the words, "the Commissioner of the Jhánsí Division," by Act XX. of 1890, s. 6 (*1*).

§ These quoted words have been substituted for the words, "the Deputy Commissioner," by Act XX. of 1890, s. 6 (*1*).

property is encumbered, shall be for ever stayed; and all processes, executions, and attachments issued by any such Court, and then in force, in respect of any such debt, shall become null and void; Act XVI. of 1882.

(*b*) in respect of any such debt no fresh proceeding, process, execution, or attachment shall, except as hereinafter provided, be instituted in, or issued by, any civil or revenue Court in British India;

(*c*) until the Commissioner has declared, as hereinafter provided, that the zamíndár has ceased to be subject to the disabilities mentioned in this clause—

(*1*) the zamindár shall be incompetent to sell, mortgage, exchange, give, or, without the consent of the Commissioner, lease his proprietary rights in land or any part thereof; and

(*2*) no proceeding, process, execution, or attachment shall be instituted in, or issued by, any civil or revenue Court in British India against those rights in respect of any private debt contracted by the zamíndár after the publication of the notice.

Claim to contain full particulars.

9. (*1*) Every claimant referred to in section 7 shall, in the written statement of his claim, present full particulars thereof.

Documents to be given up.

(*2*) Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the special Judge along with the written statement.

Entries in books.

(*3*) If the document is an entry in any book, the claimant shall produce the book to the special Judge together with a copy of the entry on which he relies. The special Judge shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced.

(*4*) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, the special Judge may refuse to receive that document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be deemed discharged.

10. Every claim against the zamíndár in respect of a private debt shall, unless made within the time and in the manner required by this Act, be deemed, for all purposes, and on all occasions, to have been duly discharged.

Order appointing time for inquiry.

11. The special Judge shall, by an order in writing, appoint a time for inquiring into each claim made as aforesaid, and a copy of that order shall be served on the claimant and on the zamindár, or, when the application has been made on behalf of a disqualified proprietor, on the manager of his property, or "the Collector,"* as the case may be.

History of transactions with zamíndár to be investigated.

At the time so appointed, or at any subsequent time to which the proceedings may be adjourned, the special Judge shall hear such of the parties as appear, and, if the amount of any claim (other than a claim decreed by a com-

* In s. 11 the words quoted have been substituted for the words, "the Deputy Commissioner," by Act XX. of 1890, s. 6 (*1*).

Act XVI. of 1882

petent Court) is disputed, shall inquire into the history and merits of that claim from the commencement of the transactions between the parties, and shall, as hereinafter provided, determine the amount (if any) justly due to the claimant

Explanation.—Subject to the right of appeal and power of revision hereinafter conferred, the effect of this determination is to extinguish the previously existing right (if any) of the claimant, together with all rights (if any) of mortgage or lien by which the same is secured, and, where any amount is determined to be due to him, to substitute for those rights a right to recover that amount in the manner and to the extent hereinafter prescribed, and not otherwise.

Mode of taking account.

12. When the special Judge inquires, under section 11, into the history and merits of a claim, he shall—

notwithstanding any agreement between the zamíndár and the claimant, or the persons (if any) through whom they claim, as to allowing compound interest, or as to setting off the profits of mortgaged property in lieu of interest without an account, or otherwise determining the manner of taking the account, and

notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings, and create a new obligation,

open the account from the commencement of the transactions between the parties, and take that account according to the following rules (that is to say):—

(*a*) separate accounts of principal and interest shall be taken;

(*b*) in the account of principal there shall be debited to the zamíndár such money as may, from time to time, have been actually received by him, or on his account, from the claimant, and the price of goods (if any) sold to him by the claimant as part of the transactions between them;

(*c*) in the account of principal there shall not be debited to the zamíndár any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure;*

(*d*) in the account of principal there shall not be debited to the zamíndár any accumulated interest which has been converted into principal at any statement or settlement of account, or by any contract made in the course of the transactions, unless the special Judge, for reasons to be recorded by him in writing, deems such debit to be reasonable;

(*e*) in the account of interest there shall be debited to the zamíndár, monthly, simple interest on the balance of principal for the time being outstanding at the rate allowed by the special Judge as hereinafter provided;

(*f*) all money paid by, or on account of, the zamíndár to the claimant, or on his account, and all profits, service, or other advantages of every description received by the claimant in the course of the transactions, shall be credited first in the account of interest, and, when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of that payment shall be credited to the zamíndár in the account of principal;

Explanation.—The advantages mentioned in this clause shall be estimated, if necessary, at such money-value as the special Judge may determine, in his discretion, or with the aid of arbitrators appointed by him;

* In s. 12 (*c*) the reference to s. 257A of Act X. of 1877 should now be read as applying to s. 257A of Act XIV. of 1882.—See s. 3 of the latter Act.

(*g*) the accounts of principal and interest shall be made up to the date of making the claim; and the aggregate of the balances (if any) appearing due on both the accounts against the zamíndár at that date shall be deemed to be the amount due at that date, except when the balance appearing due on the account of interest exceeds that appearing due on the account of principal, in which case double the latter balance shall be deemed to be the amount then due.

Interest to be allowed.

13. The interest to be awarded in taking an account, according to the rules set forth in section 12 shall be—

(*a*) the rate (if any) agreed upon between the zamíndár and the claimant, or the persons (if any) through whom they respectively claim unless that rate is deemed by the special Judge to be unreasonable; or

(*b*) if that rate is deemed by the special Judge unreasonable, or if no rate was agreed upon, or, when any agreement to set off profits in lieu of interest without an account, entered into between the zamíndár and the claimant, or the persons (if any) through whom they respectively claim, has been set aside by the special Judge, such rate as the special Judge deems reasonable.

Proceedings when amount determined to be due is paid into Court.

14. If, on the termination of the inquiries by the special Judge, the zamíndár forthwith pays into Court the aggregate amount of the claims determined to be due, together with the aggregate of such costs (if any) as the special Judge may in each case award against the zamíndár, the special Judge shall submit a report of his proceedings to the Commissioner, and shall, on the application of each claimant, pay to him such portions (if any) of the said aggregate amounts as may be due to him.

Power to rank debts, and fix future interest.

15. If the zamíndár does not pay the said amounts under section 14, and these amounts cannot, in the opinion of the special Judge, be paid from the proceeds of the sale of the zamíndár's property (exclusive of his proprietary rights in land, and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure*), the special Judge shall make an order ranking the claims and costs according to the order in which they shall be paid or discharged, and fixing the interest (if any) to be paid on the amounts thereof respectively from the date of the final decision thereon to the date of the payment or discharge thereof.

Power to eject mortgagee, &c.

16. When any person whose claim has been determined by the special Judge, or whose claim is, under section 10, to be deemed to be discharged, has, as mortgagee or otherwise, obtained possession of any land of the zamíndár as security for his claim, and continues in possession of that land, the special Judge may order him to be ejected therefrom.

Any order passed under this section shall be executed as nearly as may be in accordance with the rules prescribed by the Code of Civil Procedure* for the execution of decrees.

Report to be submitted by special Judge in certain cases.

17. When the proceedings hereinbefore prescribed have been concluded otherwise than under section 14, the special Judge shall submit a report to the Commissioner, showing the nature and amount of the claims and costs as determined and awarded by

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* In ss. 15, 16, and 17, the references to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

Act XVI. of 1882. him, the nature and amount of all the zamíndár's property (exclusive of his proprietary rights in land, and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure*) which may be available for the payment or discharge of the same, and, when an order has been made under section 15, the particulars of such order.

CHAPTER V.

PROCEDURE OF COMMISSIONER AND MODE OF LIQUIDATION.

On report of special Judge, Commissioner to sell property reported by special Judge, and, if necessary, to direct valuation of proprietary rights.

18. On receiving a report under section 17, the Commissioner shall direct that the property reported by the special Judge as available for the payment or discharge of the claims and costs determined and awarded by him, or any specified portion of that property, be sold by public auction, and, from the proceeds thereof, shall pay or discharge, so far as practicable, the amount of the said claims and costs.

If those proceeds are not sufficient to pay or discharge in full that amount, the Commissioner shall direct the value of the zamíndár's proprietary rights in land to be ascertained in the manner following :—

For the purposes of a loan, the value of those rights shall be estimated to be a sum amounting to six times the nett annual profits of the zamíndár.

For the purposes of purchase by Government, the value of those rights shall be estimated to be a sum amounting to ten times those nett annual profits.

"Nett annual profits."

Explanation.—The expression "nett annual profits" means the balance left, after deducting the amount of the annual Government revenue and the rates payable annually by the zamíndár under the North-Western Provinces Local Rates Act, 1878,† or any other Act for the time being in force, from the aggregate amount of—

(*a*) the rents which he is entitled to receive annually from his tenants;

(*b*) the rent which he would have to pay annually for his sír-land (if any), if he were an ex-proprietary tenant thereof;

(*c*) all other profits annually receivable by him as zamíndár; and

(*d*) in the case of profits occasionally receivable or varying in amount from year to year, the average annual amount of such profits during the ten years next preceding the valuation.

Proceedings in liquidation.

19. When the value of the zamíndár's proprietary rights has been ascertained as directed in section 18, the Commissioner shall proceed as follows :—

(*a*) If the sum at which the rights have been valued for the purposes of a loan is sufficient to pay or discharge the unpaid balance of the claims and costs determined and awarded by the special Judge together with the zamíndár's public debts, the Commissioner may, with the consent of the zamíndár, direct such sum as may be necessary, not being more than the amount of such valuation, to be advanced from

* In s. 17, the reference to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

† See Act III. of 1878, *supra*, p. 229.

the public treasury as a loan to the zamíndár, repayable with interest thereon at the rate of five per cent. per annum, by instalments, within a term not exceeding ten years, and shall, from the sum so advanced, pay or discharge in full the said balance and the said public debts. Act XVI. of 1882.

(*b*.) If the zamíndár does not consent to accept such loan, or if the sum at which his proprietary rights in land have been valued for the purposes of a loan is not sufficient to discharge the said balance and the said public debts, the Commissioner may order that any portion, or, if necessary, the whole, of those rights shall be sold in the manner hereinafter prescribed in order to discharge such balance and debts.

Attachment of proprietary rights.

20. When an order for the sale of the proprietary rights of any zamíndár has been made under section 19, the Commissioner may order those rights to be attached and taken under the management of "the Collector,"* who shall have for this purpose the same powers as are conferred, for the management of a mahál, on a Collector by the North-Western Provinces Land-revenue Act, 1873,† section 155.

The management shall continue till the rights are sold under this Act.

Mode of selling proprietary rights.

21. (*1*) All sales under this Act of proprietary rights in land shall be made by public auction in the manner prescribed by the said North-Western Provinces Land-revenue Act, 1873,† for the sale of immoveable property for arrears of land-revenue.

(*2*) If, at the public auction of any zamíndár's proprietary rights in land, any bid is made for those rights above the sum at which they have been valued for the purposes of purchase by Government, the rights shall be sold to the highest bidder; and the proceeds of the sale shall be paid to "the Collector"* or such officer as the Commissioner may direct.

(*3*) If no such bid is made, the Commissioner shall direct a sum of money, equal to the amount of that valuation to be paid from the public treasury to "the Collector"* or such officer.

Duty of Collector.

22. "The Collector"* or such officer, as the case may be, shall thereupon, subject to the control of the Commissioner,—

first, pay from the money which he has received under section 21 the zamíndár's public debts;

secondly, out of the balance of that money, pay or discharge, so far as may be practicable, the unpaid balances of the claims and costs determined and awarded by the special Judge in the order in which they are ranked under section 15 by that Judge;

thirdly, pay the surplus (if any) to the zamíndár.

When the whole of a zamíndár's proprietary rights in land have been sold in execution of an order passed under section 19, clause (*b*), and the proceeds of the sale are insufficient to discharge in full the amounts referred to in this section, the unpaid balance of those amounts shall nevertheless be deemed to have been duly discharged.

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* In ss. 20, 21, and 22, the words quoted have been substituted for the words "the Deputy Commissioner," by Act XX. of 1890, s. 6 (*1*).

† See Act XIX. of 1873, Vol. I., p. 1124.

Act XVI. of 1882.

Consequences of loan.

23. When a sum of money has been lent, under section 19, clause (*a*), to a zamíndár, and applied as provided in that clause, and he fails to pay any instalment of principal or interest on the day fixed for the payment thereof, the whole sum remaining unpaid on account of principal or interest, or both, shall be recoverable at once as if it were an arrear of land-revenue due by him in respect of the land comprised in the valuation made under section 18.

Conditions of purchase by Government.

24. When a sum of money has been paid from the public treasury in respect of any proprietary rights of a zamíndár as provided in section 21, and has been applied as provided in section 22, the following consequences shall ensue (namely):—

(*a*) all such proprietary rights shall vest in Her Majesty;

(*b*) in respect of any of his sír-land, the proprietary rights in which are, under this section, vested in Her Majesty, the zamíndár shall be deemed to be an ex-proprietary tenant holding the land directly under the Government.

Power to declare that zamíndár has ceased to be subject to disabilities.

25. In each of the following cases, namely,—

(*a*) when a report has been submitted to the Commissioner under section 14, or

(*b*) when the claims and costs determined and awarded by the special Judge have been paid or discharged in full under section 18, or

(*c*) when the amount lent, under section 19, to a zamíndár has been repaid together with the interest due thereon, or

(*d*) when the amount so lent with interest has been recovered from him as an arrear of land-revenue, or the balance thereof remaining unpaid has been remitted by the Local Government, or

(*e*) when the whole, or, where it is necessary to sell only a portion, that portion, of his proprietary rights in land has been sold under this Act to the highest bidder, or those rights have vested in Her Majesty under section 24,

the Commissioner shall declare that the zamíndár has ceased to be subject to the disabilities mentioned in section 8, clause (*c*):

Provided that, in cases coming under clause (*d*) of this section, no such declaration shall be made without the previous sanction of the Local Government.

CHAPTER VI.

Of Appeal and Revision.

Appeals.

26. An appeal against any decision or order of the special Judge, under this Act, shall lie to the Commissioner if preferred within one month from the date of the decision or order, and not later, unless the appellant satisfies the Commissioner that he had sufficient cause for not presenting the appeal within that period.

Subject to the power of revision next hereinafter provided, the decision of the Commissioner on an appeal under this section shall be final.

Power to call for proceedings and pass order thereon.

27. The Board of Revenue or the Commissioner may, of its or his own motion, or on the application of any person concerned, call for and revise the proceedings in any case un-

der this Act, and pass such order thereon, consistent with the provisions herein contained, as it or he thinks fit: Act XVI of 1882.

Provided that nothing in this section shall empower the Commissioner to pass any order reversing or modifying an order passed by the Board of Revenue.

CHAPTER VII.

MISCELLANEOUS.

Death of zamíndár during proceedings.

23. If a zamíndár with regard to whom a notice has been published under section 7 dies before a declaration has been made in respect of him under section 25,

(*a*) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the zamíndár were still living; and

(*b*) any person succeeding to the whole or any portion of the zamíndár's proprietary rights in land shall become subject in respect of those rights to the disabilities imposed by section 8, clause (*c*), and shall continue so subject until a declaration has been made in respect of him under section 25.

Investigation to be deemed a judicial proceeding.
Special Judge deemed public servant within meaning of Indian Penal Code.

29. Every investigation conducted by the special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code; and the special Judge shall be deemed to be a public servant within the meaning of that Code.

Power to summon witnesses, compel production of documents, and award costs.

30. For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure.*

Bar of suits.

31. No suit or other proceeding shall be maintained against any person in respect of anything done by him in good faith pursuant to this Act.

Power to make rules.

32. The Local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the procedure in all cases under this Act;

(*b*) to declare what shall, for the purposes of this Act, be deemed to be the vernacular language of any specified district; and

(*c*) generally to carry out the provisions of this Act.

Such rules shall be published in the official Gazette, and, when so published, shall have the force of law.

* In s. 30 the reference to Act X. of 1877 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

Act XVIII. of 1882.

ACT XVIII. OF 1882.

THE BURMA STEAM-BOILERS AND PRIME-MOVERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH AUGUST 1882.

An Act to provide for the inspection of Steam-boilers and Prime-movers attached thereto in Lower Burma.

WHEREAS it is expedient to provide in Lower Burma for the inspection of steam-boilers and prime-movers attached thereto, and for the management of the same by competent engineers; It is hereby enacted as follows:—

Preamble.

Short title.

1. (*1*) This Act may be called the Burma Steam-boilers and Prime-movers Act, 1882.

Commencement.

(*2*) It shall, except where it is otherwise expressed, come into force on such day as the Chief Commissioner of Lower Burma,* with the previous sanction of the Governor-General in Council, may, by notification in the *Burma Gazette*,† direct.

Local extent.

(*3*) It extends in the first instance only to the towns of Rangoon, Moulmain, Akyab, and Bassein; but the Chief Commissioner may, from time to time, by notification in the *Burma Gazette*, extend it, from such date as may be specified in the notification, to any other local area in the territories‡ administered by him.

Savings.

(*4*) Nothing in this Act shall apply to any locomotive engine used on a railway, or to any engine on board of a ship, launch, or boat.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

"boiler:"

"boiler" includes any vessel used for generating steam under pressure:

"prime-mover:"

"prime-mover" includes any steam-engine, and a fly-wheel, first driving shaft, or pulley when attached to any such engine:

"owner:"

"owner" includes also any person using any boiler or prime-mover as agent of the owner thereof, and any person using a boiler or prime-mover which he has hired from the owner thereof:

"Inspector."

"Inspector" means a person appointed under this Act to be an Inspector.

Appointment of Inspectors.

3. (*1*) The Chief Commissioner may, at any time after the passing of of this Act, and from time to time, appoint such persons to be Inspectors as he thinks fit, and suspend or remove any person so appointed.

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* This officer has, since Upper Burma was placed under the administration of the Chief Commissioner of Lower Burma, has been styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th idem, Pt. I., p. 539.

† Act XVIII. of 1882 came into force on Feb. 1, 1883.—See *Burma Gazette*, Dec. 2, 1882, Pt. I., p. 614.

‡ These territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*).

(*2*) The persons so appointed shall, within such local area as the Chief Commissioner may, from time to time, direct, exercise the powers and perform the duties conferred and imposed by or under this Act on an Inspector.

Examination of, and grant of certicates to, engineers.

4. The Chief Commissioner may, at any time after the passing of this Act, and from time to time, make rules regulating the examination of, and the grant (with or without examination) of certificates to, persons to act as engineers of the first or second class "or as engine-drivers"* under this Act, and the cancellation of certificates so granted.

Use of boiler or prime-mover without license prohibited.

5. (*1*) After such day as the Chief Commissioner may, by notification in the *Burma Gazette*, fix in this behalf, a boiler or prime-mover shall not be used unless a license authorizing its use has been granted under this Act and is in force.

(*2*) Such a license shall not be granted in respect of a boiler or prime-mover unless it is in charge of an engineer, "or, in the case of a boiler or prime-mover attached to an engine of not more than twenty-horse power, of an engineer or engine-driver,"† to whom a certificate has been granted in accordance with the rules made under section 4, and its condition has been ascertained as hereinafter provided.

On notice from owner, Inspector to examine boiler or prime-mover.

6. (*1*) When the owner of a boiler or prime-mover desires to obtain a license in respect thereof, he shall give notice of his intention to use the boiler or prime-mover to the Inspector for the local area within which it is situate.

(*2*) On receipt of the notice, the Inspector shall appoint a day and time, after sunrise and before sunset, for the inspection of the boiler or prime-mover. The day so appointed shall be a day, if the boiler or prime-mover is situate in the town of Rangoon, Maulmain, Akyab, or Bassein, not later than seven days, and if it is situate elsewhere, not later than thirty days, from the day on which the notice is received.

(*3*) On the day and at the time so appointed, the Inspector shall carefully examine the boiler or prime-mover, and every part thereof; and the owner or person in charge thereof shall afford to the Inspector all reasonable facilities for the examination, and all such information regarding the boiler or prime-mover as he may reasonably require.

Inspector may require owner to alter boiler or prime-mover.

7. If, on making the examination under section 6, the Inspector is of opinion that the boiler or prime-mover requires any alteration or addition, he shall refuse to grant a license until the alteration or addition is made, and shall serve on the owner of the boiler or prime-mover a written notice of his refusal, specifying the alteration or addition which, in his opinion, is required.

When Inspector to grant license.

8. When the Inspector is satisfied—

(*a*) that the boiler or prime-mover is in good condition, and not so exposed as to be likely to be dangerous, and

(*b*) that the boiler or prime-mover is in charge of an engineer, "or, in the case of a boiler or prime-mover attached to an engine of not more than twenty-horse power, of an engineer or engine-driver,"† to whom a certificate has been granted in accordance with the rules made under section 4,

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* In s. 4 the words quoted have been added by Act I. of 1885, s. 2.

† In ss. 5 (*2*) and 8 (*b*) the words quoted have been inserted by Act I. of 1885, s. 3.

Act XVIII. of 1882.

he shall give to the owner thereof a written license, signed by him, in the form prescribed in the first schedule hereto annexed, or a form to the like effect, on payment, by the owner, of such fee as the Chief Commissioner may by rule prescribe.

Licensing of boilers, &c., in charge of certain engineers.

9. (*1*) When a boiler or prime-mover is in charge of an engineer who has obtained, in accordance with the rules made under section 4, a certificate as engineer of the first class, the Chief Commissioner may, by an order in writing, direct that the report of that engineer shall, for the purpose of granting a license under this Act in respect of that boiler or prime-mover, be received as sufficient evidence of the matters referred to in section 8, clause (*a*).

(*2*) The Chief Commissioner may rescind any order made under clause (*1*).

(*3*) If the owner of any boiler or prime-mover, in respect of which an order under clause (*1*) is in force, presents to the Inspector, at the time of giving notice in respect of that boiler or prime-mover under section 6, a report in respect of that boiler or prime-mover in the form prescribed in the second schedule hereto annexed, or a form to the like effect, and signed by the engineer mentioned in the order, and pays to the Inspector such fee as aforesaid, the Inspector shall, notwithstanding anything hereinbefore contained, endorse on the report a license in the form prescribed in the third schedule hereto annexed, or a form to the like effect, without examining the boiler or prime-mover.

License to state period for which it is to be in force.

10. Every license granted under this Act shall state the period for which it is to continue in force, and shall cease to be in force on the expiration of that period.

Revocation or suspension of license.

11. Any person authorized by the Chief Commissioner in this behalf may revoke or suspend any license granted under this Act in respect of any boiler or prime-mover when he has reason to believe—

(*a*) that the license has been fraudulently obtained, or has been granted erroneously, or without sufficient examination; or

(*b*) that the boiler or prime-mover in respect of which it has been granted is not in charge of an engineer, "or, in the case of a boiler or prime-mover attached to an engine of not more than twenty-horse power, of an engineer or engine-driver,"* to whom a certificate has been granted in accordance with the rules made under section 4, or is not in good condition, or has, since the granting of the license, sustained injury; or

(*c*) where the license has been granted under section 9, that the boiler or prime-mover has ceased to be under the charge of the engineer on whose report the license was granted.

Appeal against refusal, revocation, or suspension of license.

12. (*1*) The owner of any boiler or prime-mover may appeal from any order made under this Act refusing to grant, or revoking, or suspending, a license.

(*2*) The appeal shall, within seven days from the day on which the owner received the order appealed against, be presented to some person authorized by the Chief Commissioner to hear appeals hereunder.

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* In s. 11 (*b*) the words quoted have been inserted by Act I. of 1885, s. 3.

(3) Every such person shall be deemed to be a public servant within the meaning of the Indian Penal Code, and may, if he thinks fit, summon to his assistance, in such manner as the Local Government may, from time to time, direct, two competent assessors; and those assessors shall attend and assist accordingly.

(4) If the person hearing the appeal is satisfied that the owner is entitled to the license, he shall, on payment of the fee, grant a license in such form as the Chief Commissioner may, from time to time, by rule, prescribe, or shall cancel the order revoking or suspending the license, as the case may be.

(5) If the person hearing the appeal is of opinion that the order appealed against is right, he shall dismiss the appeal; and the costs of the appeal incurred by Government and certified by him shall be recoverable from the appellant, as a fine, by any Magistrate having jurisdiction in the place where the boiler or prime-mover is situate.

Power of Inspector to enter place or building.

13. An Inspector may at any time enter into any place or building where he has reason to believe that a boiler or prime-mover is used without a license, or under a license granted under section 8, or on appeal from an order refusing a license under that section, for the purpose of inspecting and examining the same.

Penalties.

14. Every owner, or person in charge, of any boiler or prime-mover who—

(*a*) uses that boiler or prime-mover in contravention of the provisions of section 5, or,

(*b*) having a license granted under this Act and in force in respect of any boiler or prime-mover, fails to produce the same when called upon, at any reasonable time to do so, by any Magistrate having jurisdiction in the place in which that boiler or prime-mover is situate, or by any person authorized in writing by that Magistrate to demand the production of the license, and

every person who prevents an Inspector from entering, under section 13, any place or building,

shall be punished with fine which may extend to five hundred rupees.

Engineer signing false report under section 9.

15. Any engineer signing any report under section 9, which he either knows or believes to be false in any material point shall be deemed to have committed an offence punishable under section 197 of the Indian Penal Code.

Charges not to be brought after six months, or without Inspector's sanction.

16. No charge of an offence under this Act shall be brought against any person without the previous sanction of an Inspector, or after the expiration of six months from the date of the commission of the offence.

Power to define limits of towns.

17. The Chief Commissioner may, from time to time, define what shall be deemed to be, for the purposes of this Act, the local limits of the towns of Rangoon, Maulmain, Akyab, and Bassein respectively.*

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* For local limits of the towns of Rangoon, Maulmain, Akyab, and Bassein, see *Burma Gazette*, March 31, 1883, Pt. I., p. 109; Dec. 30, 1876, Pt. II., p. 297; March 20, 1880, Pt. II., p. 66; and Oct. 3, 1874, Pt. II., pp. 174 and 173.

Act XVIII. of 1882.

Power to make rules.

18. The Chief Commissioner may, at any time after the passing of this Act, and from time to time, make rules consistent with this Act for all or any of the following purposes (that is to say):—

(*a*) for prescribing the powers and duties of Inspectors;

(*b*) for fixing the fees payable on account of licenses granted under this Act;

(*c*) for determining the time for which such licenses shall be in force;

(*d*) for regulating the procedure on hearing appeals, and conferring on the persons authorized to hear appeals any of the powers conferred on a Civil Court by the Code of Civil Procedure; and

(*e*) generally for carrying out the purposes of this Act.

All such rules shall be published thrice in the *Burma Gazette*, and shall come into force on the day on which they are last so published, or on such later day as may be specified in the notification publishing them.

Act XVIII. of 1882.

FIRST SCHEDULE.

(*See section 8.*)

FORM OF LICENSE.

1	2	3	4	5	6	7	8	9
Name of owner.	Description of boiler.	Description of prime-mover.	Power.	When and where made.	When and where last repaired.	No. and date of certificate of engineer in charge.	Period for which license is to be in force.	REMARKS.

I, the undersigned, certify that I have examined the boiler (*or* prime-mover) above described, and, to the best of my judgment, it is in good condition, and is not so exposed as to be likely to be dangerous. The engineer in charge is possessed of a certificate [and (*in case alterations or additions have been required*) the alterations (*or* additions) required by me have been properly made].

A. B.,

Inspector,

I. C. A.—186.

Act XVIII. of 1882.

SECOND SCHEDULE.

(See section 9.)

REPORT OF ENGINEER.

1	2	3	4	5	6	7	8
Name of owner.	Description of boiler.	Description of prime-mover.	Power.	When and where made.	When and where last repaired.	No. and date of certificate of engineer in charge.	REMARKS.

I, the undersigned, certify that I am in charge of the boiler (*or* prime-mover) above described, that I have examined the same, and, to the best of my judgment, it is in good condition, and is not so exposed as to be likely to be dangerous, and may safely be licensed for the period of

C. D.,
Engineer.

THIRD SCHEDULE.

(See section 9.)

FORM OF LICENSE TO BE ENDORSED ON REPORT OF ENGINEER.

I, the undersigned, hereby authorize the use of the boiler (*or* prime-mover) to which this report refers for a period of ending on the day of 188 .

A. B.,
Inspector.

ACT XIX. OF 1882.

THE PANJAB UNIVERSITY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH OCTOBER 1882.

An Act to establish and incorporate the University of the Panjáb.

Preamble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Panjáb University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of the vernacular languages of the Panjáb, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education ;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the vernacular, the English language should be regarded as the medium of examination and instruction ;

And whereas this Institution was, by a Notification, No. 472, dated 8th December 1869, published in the *Panjáb Government Gazette* of the twenty-third day of December 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles, and influential classes of the Panjáb, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles, and influential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and for the purpose of conferring upon them academical degrees, diplomas, Oriental literary titles, licenses, and marks of honour ;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immoveable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied ;

It is hereby enacted as follows :—

Short title and commencement.

1. This Act may be called the Panjáb University Act, 1882 ;

and it shall come into force at once.

Establishment and incorporation of University.

2. (*1*) A University shall be established at Lahore ; and the Governor-General for the time being shall be the Patron of the University.

(*2*) The University shall consist of a Chancellor, a Vice-Chancellor, and such number of Fellows as may be determined in manner hereinafter provided.

(*3*) The University shall be a Body Corporate by the name of the University of the Panjáb, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

Act XIX. of 1882.

(4) The University shall come into existence on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

Property of Panjáb University College to vest in University.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Panjáb University College, shall, on that date, become the property of the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

Chancellor.

4. The Lieutenant-Governor of the Panjáb for the time being shall be the Chancellor of the University; and the First Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

Vice-Chancellor.

5. (1) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(2) Except as provided in sub-section (4), he shall hold office for two years from the date of his appointment, and, on the expiration of his term of office, may be re-appointed.

(3) But if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(4) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Panjáb, shall be deemed to have been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (3), expire on the last day of December 1884.

Fellows.

6. The following persons shall be Fellows, namely:—

(a) every person who has held the office of Chancellor, and all persons for the time being holding such offices under Government as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf;

(b) persons whom the Chancellor may, from time to time, appoint by name as being eminent benefactors of the Panjáb University, original promoters of the movement in favour of the establishment of the Panjáb University College, or persons distinguished for attainments in Literature, Science, or Art, or for zeal in the cause of education;

(c) such persons (if any) as may, from time to time, be elected by the Senate of the University, and approved by the Chancellor; and

(d) the representatives, for the time being with the Government of the Panjáb, of such Chiefs (if any) of territories not comprised in British India as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that—

(1) the whole number of the Fellows holding office under clauses (a), (b), and (c), exclusive of the Vice-Chancellor, shall never be less than fifty; and

(2) the number of persons for the time being elected under clause (c) shall never exceed the number for the time being appointed under clause (b).

Explanation.—The succession to an office notified under clause (*a*), of a person elected under clause (*c*), or appointed under clause (*b*), does not affect his position for the purposes of the second clause of this proviso. Act XIX. of 1882.

First Fellows.

7. (*1*) The offices specified in Part I. of the schedule hereto annexed shall be deemed to have been specified in a notification issued under section 6, clause (*a*); and

(*2*) the persons named in Part II. of that schedule shall, except for the purposes of the second clause of the proviso to section 6, be deemed to have been appointed Fellows under clause (*b*) or (*c*) of section 6.

Cancellation and vacation of appointment of Fellow.

8. (*1*) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow appointed under section 6, clause (*b*) or clause (*c*); and the Local Government may, whenever it thinks fit, by notification in the official Gazette, cancel or amend any notification issued under section 6, clause (*a*) or clause (*d*).

(*2*) If any Fellow appointed under section 6, clause (*b*) or clause (*c*), and not being a person named in Part II. of the schedule to this Act, leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

Constitution and powers of Senate.

9. (*1*) The Chancellor, Vice-Chancellor, and Fellows for the time being shall form the Senate of the University.

(*2*) The Senate shall have the entire management of, and superintendence over, the affairs, concerns, and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the Statutes, Rules, and Regulations for the time being in force under this Act.

Chairman at meetings of Senate.

10. At every meeting of the Senate the Chancellor, or, in his absence, he Vice-Chancellor, or, in the absence of both, a Fellow chosen by a majority of the Fellows present at the meeting, shall preside as Chairman.

Proceedings at meetings of Senate.

11. Every question which comes before the Senate at a meeting shall be decided by a majority of the votes of the members present and of such members for the time being in India as may have sent proxies in accordance with the Rules for the time being in force under this Act; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote:

Provided that no question shall be decided at any such meeting unless fourteen members at the least, besides the Chairman, are present at the time of the decision.

Appointment of Syndicate, Faculties, Examiners, and Officers.

12. Subject to the Statutes, Rules, and Regulations for the time being in force under this Act, the Senate may, from time to time,—

(*1*) constitute an Oriental Faculty and Faculties of Arts, Law, Science, Medicine, and Engineering;

(*2*) appoint, or provide for the appointment of, a Syndicate;

(*3*) appoint, suspend, and remove a Registrar;

(*4*) appoint, suspend, and remove, or provide for the appointment, suspension, and removal of,—

(*a*) Examiners, Officers, and servants of the University, and

(*b*) Professors and Lecturers in connection with the University.

Act XIX. of 1882.

The first Registrar shall be Gottlieb William Leitner, Esquire, Master of Arts, Doctor of Laws, Barrister-at-Law.

Functions of Syndicate.

13. The Syndicate shall be the Executive Committee of the Senate, and may discharge such functions of the Senate, as it may be empowered to discharge by the Statutes, Rules, and Regulations for the time being in force under this Act.

Power to confer degrees, &c., after examination.

14. Subject to the Statutes, Rules, and Regulations for the time being in force under this Act, the Senate may confer on all persons who have passed such examinations in the University, and fulfilled such other conditions as may be prescribed under this Act—

(*a*) in the Oriental Faculty, the degrees of Bachelor, Master, and Doctor of Oriental Learning;

(*b*) in the Faculty of Arts, the degrees of Bachelor and Master of Arts and Doctor of Literature:

And, if empowered by the Governor-General in Council in this behalf,—

(*c*) in the Faculty of Law, the degrees of Bachelor and Doctor of Laws;

(*d*) in the Faculty of Science, the degrees of Bachelor and Doctor of Science;

(*e*) in the Faculty of Medicine, the degrees of Bachelor and Doctor of Medicine;

(*f*) in the Faculty of Engineering, the degrees of Bachelor and Master of Civil Engineering.

The Senate may also confer—

(*g*) such diplomas, Oriental literary titles, and license as may be prescribed by any Rules for the time being in force under this Act; and

(*h*) such marks of honour for a high degree of proficiency in the different branches of Literature, Science, and Art as may be prescribed by those Rules.

Power to confer degrees on persons who have passed examinations at the Panjáb University College in 1882.

15. Notwithstanding anything in section 14, the Senate may confer degrees, diplomas, Oriental literary titles, licenses, or marks of honour, as provided by that section, on any persons who have in the year 1882, before the passing of this Act, passed such examinations prescribed by the Panjáb University College as may be sufficient to satisfy the Senate that they are persons qualified in point of learning to obtain those degrees, diplomas, Oriental literary titles, licenses, or marks of honour.

Power to confer honorary degrees.

16. Notwithstanding anything hereinbefore contained, but subject to the confirmation of the Chancellor, the Senate may, in the Oriental Faculty and the Faculties of Arts and Law, grant the degree of Doctor to any person without requiring him to undergo any examination for that degree:

Provided that—

(*1*) a resolution has been passed at a meeting of the Senate that the person is, by reason of eminent position and attainments, a fit and proper person to receive that degree; and

(*2*) in the case of degrees in the Faculty of Law, the Senate has been empowered by the Governor-General in Council to grant such degrees after examination.

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Power to levy fees.

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the Rules or Regulations for the time being in force under this Act.

Power to make Statutes, Rules, and Regulations.

18. (*1*) The Senate shall, as soon as may be, after the passing of this Act, and may from time to time thereafter, make, Statutes, Rules, and Regulations consistent with this Act touching—

(*a*) the mode and time of convening the meetings of the Senate, and of transacting business thereat ;

(*b*) the appointment, suspension, removal, duties, and remuneration of the Registrar, Examiners, Professors, Lecturers, officers, and servants ;

(*c*) the appointment, constitution, and duties of the Syndicate and the Faculties ;

(*d*) the previous course of instruction to be followed by candidates for the examinations of the University ;

(*e*) the examinations to be passed and the other conditions to be fulfilled by candidates for degrees ;

(*f*) the examinations to be passed and the other conditions to be fulfilled by candidates for diplomas, Oriental literary titles, licenses, and marks of honour, respectively ;

(*g*) the conduct of examinations for degrees, diplomas, Oriental literary titles, licenses, and marks of honour ; and

(*h*) generally all matters regarding the University.

(*2*) All such Statutes, Rules, and Regulations shall be reduced into writing, and sealed with the common seal of the University, and shall—

(*a*) in the case of Statutes, and of Rules and Regulations made under clause (*e*) of this section, after they have been confirmed by the Local Government and sanctioned by the Governor-General in Council, and

(*b*) in the case of all other Rules and Regulations, after they have been sanctioned by the Local Government,

be binding on all persons, members of the University, or admitted thereto, and on all candidates for degrees, diplomas, Oriental literary titles, licenses, and marks of honour.

(*3*) If, on the expiration of eighteen months from the date on which the University comes into existence, no Statutes, Rules, or Regulations have been made and sanctioned, or (as the case may be) made, confirmed, and sanctioned, under the foregoing provisions of this section, touching a matter mentioned in sub-section (*1*), the Local Government may, by notification in the official Gazette, make such Statutes, Rules, or Regulations touching that matter as it thinks fit ; and, subject, in the case of Statutes, and of Rules and Regulations touching the matters mentioned in clause (*e*) to the sanction of the Governor-General in Council, those Statutes, Rules, or Regulations shall be deemed to have been made and sanctioned, or (as the case may be) made, confirmed, and sanctioned, under sub-sections (*1*) and (*2*).

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Duty of Local Government to enforce Act, Statutes, Rules, and Regulations.

19. It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act, and with the Statutes, Rules, and Regulations for the time being in force under the same; and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and the said Statutes, Rules, and Regulations.

Notifications in certain cases.

20. All appointments made under section 5, all appointments made or cancelled under section 6, clauses (*b*) and (*c*), and section 8, all degrees, diplomas, Oriental literary titles, or licenses conferred under sections 14, 15, and 16, and all Statutes, Rules, and Regulations made under section 18, shall be notified in the official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published.

Annual accounts.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as the Local Government may direct.

Temporary provision as to Statutes, Rules, and Regulations.

22. The Statutes, Rules, and Regulations of the Panjáb University College shall, so far as they are consistent with this Act, be deemed to be the Statutes, Rules, and Regulations of the University, and shall remain in force for two years from the date on which the University comes into existence, unless they are sooner repealed by a Statute made in accordance with section 18.

THE SCHEDULE.

(*See section 7.*)

PART I.

Offices to be deemed to have been specified under section 6, clause (*a*) :—

The office of—

Judge of the Chief Court, Panjáb;
Financial Commissioner of the Panjáb;
Surgeon-General of the Panjáb;
Commissioner of Lahore;
Commissioner of Delhi;
Commissioner of Amritsar;
Accountant-General of the Panjáb;
Director of Public Instruction, Panjáb;
Principal of the Lahore Government College;
Principal of the Lahore Medical School;
Inspector of Schools in the Panjáb;
Deputy Commissioner of Lahore;
Deputy Commissioner of Delhi;
Deputy Commissioner of Amritsar.

PART II.

Persons to be deemed to have been appointed Fellows under section 6, clause (*b*) or (*c*) :—

His Highness Mahárájá Ranbír Singh, of Jammú and Kashmír, G.C.S.I., C.I.E., Counsellor of the Empress of India;

His Highness Mahárájá Rajindar Singh, of Patiála;

His Highness Nawáb Sadik Muhammad Khán of Baháwalpur, G.C.S.I.; Act XIX of 1882.
His Highness Rájá Raghbír Singh, of Jhínd, G.C.S.I., C.I.E., Counsellor of the Empress of India;
His Highness Rájá Híra Singh, of Nabhá, G.C.S.I.;
His Highness Rájá Jagátjít Singh, of Kapúrthhála;
Rájá Bije Sen, of Mandi;
Nawáb Ibrahim Ali Khán, of Maler Kotla;
Rájá Bíkram Singh, of Faridkot;
Nawáb Abdul Majid Khán;
Sardár Ajít Singh, Atariwála;
Rai Amin Chand, Sardár Bahádur;
Malaz-ul-Ulmá Sardár Atar Singh, C.I.E., of Bhadaur;
Major-General Henry Prevost Babbage, Bengal Staff Corps, late Deputy Commissioner, Panjáb;
David Graham Barkley, Esquire, M.A., Bengal Civil Service, Barrister-at-Law;
Deputy Surgeon-General Henry Walter Bellew, C.S.I.;
Reverend Edward Bickersteth, M.A.;
Charles Boulnois, Esquire, Barrister-at-Law, late Judge, Chief Court, Panjáb;
Sardár Bikráma Singh, C.S.I., Ahluwália;
Arthur Brandreth, Esquire, Barrister-at-Law, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
Surgeon-Major Thomas Edwin Burton Brown, M.D.;
John Scarlett Campbell, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
Surgeon-Major William Center, M.D., M.A.;
Reverend Robert Clark, M.A.;
John Graham Cordery, Esquire, M.A., Bengal Civil Service;
The Hon'ble Henry Stuart Cunningham, A.M., Barrister-at-Law, Judge of the High Court, Calcutta;
Surgeon-Major Alexander Morrison Dallas;
Mansel Longworth Dames, Esquire, Bengal Civil Service;
Sir Robert Henry Davies, K.C.S.I., C.I.E., late Lieutenant-Governor of the Panjáb and its Dependencies;
Colonel William George Davies, C.S.I.;
Deputy Surgeon-General Annesley Charles Castriot DeRenzy, B.A.;
Sir Robert Eyles Egerton, K.C.S.I., C.I.E., Counsellor of the Empress, late Lieutenant-Governor of the Panjáb and its Dependencies;
Dennis Fitzpatrick, Esquire, B.A., Bengal Civil Service, Barrister-at-Law;
Reverend C. W. Foreman, D.D.;
The Right Reverend Thomas Valpy French, D.D., Lord Bishop of Lahore;
Munshi Ghulám Nabi;
Surgeon-Major Robert Gray, M.B.;
Major Leopold John Henry Gray, C.S.I., Bengal Staff Corps;
Sir Lepel Henry Griffin, K.C.S.I., Bengal Civil Service;
Pandit Guru Parshád;
Sayyad Hádí Husain Khán;
Rájá Harbáns Singh;
Kaur Harnám Singh, Ahluwália;
Doctor Thomas Hastings, late Deputy Inspector-General of Hospitals;
Edward Piercy Henderson, Esquire, Bengal Civil Service, Barrister-at-Law;
Surgeon-Major George Henderson, M.D.;
Mír Hidayat Alí, Khán Bahádur;
Lieutenant-Colonel William Rice Morland Holroyd;
Reverend W. Hooper, M.A.;
Reverend T. P. Hughes, B.D.;
Munshi Hukm Chand;
Sodhi Hukm Singh;
Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service;
Rájá Jahándád Khán, Khán Bahádur, Ghakkar;
Aghá Kalbabíd;
Fakír Sayyad Kamr-ud-din;
Rai Bahádur Kanhya Lál, C.E.;
Khán Bahádur Khán Muhammad Sháh;
Bábá Khem Singh, C.I.E., Bedi;
John Lockwood Kipling, Esquire;

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Surgeon Edward Lawrie, M.D.;
Gottlieb William Leitner, Esquire, M.A., LL.D.;
Thomas Crampton Lewis, Esquire, M.A.;
Charles Robert Lindsay, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
James Broadwood Lyall, Esquire, Bengal Civil Service;
General Robert Maclagan, R.E., late Secretary to Government, Panjáb, Public Works Department;
Colonel Charles Alexander McMahon;
The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore;
Colonel Julius George Medley, R.E.;
Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil Service, and Governor-General's Agent, Baroda;
John Andrew Erasmus Miller, Esquire;
Pandit Motí Lál, Káthju;
Khán Bahádur Muhammad Barkat Alí Khán;
Khalífa Sayyad Muhammad Hussain;
Muhammad Hyat Khán, C.S.I.;
Rai Múl Singh;
Nasir Alí Khán, Kazilbásh;
Bábú Navina Chandrá Rai;
Nawáb Nawázish Alí Khán;
Major Edward Newbery;
Edward O'Brien, Esquire, Bengal Civil Service;
Henry Edmund Perkins, Esquire, Bengal Civil Service;
Henry Meredith Plowden, Esquire, B.A., Barrister-at-Law;
Major-General Charles Pollard, R.E.;
Baden Henry Baden-Powell, Esquire, Bengal Civil Service;
Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service, and Settlemen Commissioner, Panjáb;
Honorary Surgeon Rahím Khán, Khán Bahádur;
Diwán Rám Náth;
William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-Law;
Pandit Rikhi Kesh;
Rájá Sir Sáhib Dyal, K.C.S.I.;
Rai Bahádur Sáhib Singh;
Leslie Seymour Saunders, Esquire, Bengal Civil Service;
Brigade-Surgeon John Barcley Scriven, late Civil Surgeon, Lahore;
David Simson, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
John Sime, Esquire, B.A.;
Surgeon-General Charles Manners Smith, late of the Indian Medical Service;
John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-Law;
Charles Henry Spitta, Esquire, LL.B., Barrister-at-Law;
Thomas Henry Thornton, Esquire, D.C.L., C.S.I., late of the Bengal Civil Service, and Judge, Chief Court, Panjáb.
Thomas William Hooper Tolbort, Esquire, Bengal Civil Service, Barrister-at-Law;
Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service;
Major Isaac Peatt Westmoreland, R.E.;
Lieutenant-Colonel George Gordon Young;
William Mackworth Young, Esquire, M.A., Bengal Civil Service;
Maulvi Zia-ud-dín Khán.

ACT XX. OF 1882.

THE INDIAN PAPER CURRENCY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH OCTOBER 1882.

An Act to amend the law relating to the Government Paper Currency.

Preamble.

WHEREAS it is expedient to amend the law relating to the Government Paper Currency; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called the Indian Paper Currency Act, 1882;

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on the passing thereof.

Act No. III. of 1871 repealed.

2. (*1*) Act No. III. of 1871 (*to consolidate and amend the law relating to the Government Paper Currency*) is hereby repealed.

(*2*) All appointments made, rules prescribed, notifications published, authorities conferred, securities purchased, and notes issued under the said Act, or any Act thereby repealed, shall, if in force, undisposed of, or in circulation, when this Act comes into force, be deemed to be respectively made, prescribed, published, conferred, purchased, and issued under this Act. And all references made to any portion of the Indian Paper Currency Act, 1871, or any Act thereby repealed, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to the corresponding portion of this Act.

II.—The Department of Paper Currency.

Department of Paper Currency.

3. (*1*) There shall continue to be a Department of the public service, whose function shall be the issue of promissory notes of the Government of India, payable to bearer on demand, for such sums, not being less than five rupees, as the Governor-General in Council, from time to time, directs.

(*2*) Such notes shall be called currency notes.

(*3*) The Department shall be called the Department of Paper Currency.

Head Commissioner.

4. At the head of the Department there shall be an officer called the Head Commissioner of Paper Currency, and there shall be three other officers, called, respectively, the Commissioner of Paper Currency for Madras, the Commissioner of Paper Currency for Bombay, and the Commissioner of Paper Currency for Rangoon.

Commissioners for Madras, Bombay, and Rangoon.

Power to establish Circles of Issue, &c.

5. The Governor-General in Council may, from time to time, by order notified in the *Gazette of India*,—

(*a*) establish districts, to be called Circles of Issue, four of which circles shall include the towns of Calcutta, Madras, Bombay, and Rangoon, respectively,

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(*b*) appoint in each circle some one town to be the place of issue of currency notes, as hereinafter provided,

(*c*) establish in each such town an office or offices of issue,

(*d*) establish in any town situate in any circle an office, to be called a Currency Agency, and

(*e*) declare that, for the purposes of this Act, any town (other than Calcutta, Madras, Bombay, or any town situate in British Burma) in which an office of issue is established, shall be deemed to be situate within such Presidency as is specified in the order.

Deputy Commissioners and Currency Agents.

6. For each Circle of Issue, other than those which include the towns of Calcutta, Madras, Bombay, and Rangoon, there shall be an officer called the Deputy Commissioner of Paper Currency, and for each Currency Agency an officer called the Currency Agent.

Subordination of Commissioners, &c.

7. For the purposes of this Act—

(*a*) the Commissioners of Paper Currency for Madras, Bombay, and Rangoon, and the Deputy Commissioners of Paper Currency in the Presidency of Fort William in Bengal, shall be subordinate to the Head Commissioner of Paper Currency; and

(*b*) the Deputy Commissioners of Paper Currency in the Presidencies of Fort St. George and Bombay, and in the Province of British Burma, shall be subordinate to the Commissioners of Paper Currency for Madras, Bombay, and Rangoon, respectively.

(*c*) The Currency Agent at any town shall be subordinate to the Head Commissioner, Commissioner, or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which that town is situate.

Appointment, suspension, and removal of officers.

8. All officers under this Act shall be appointed, and may be suspended or removed, by the Governor-General in Council.

III.—Supply and Issue of Currency Notes.

Head Commissioner to provide and distribute currency notes.

9. (*1*) The Head Commissioner shall provide currency notes of the denominations prescribed under this Act, and shall supply the Commissioners and the Currency Agents subordinate to him, and the Deputy Commissioners, with such notes as they need for the purposes of this Act.

(*2*) The Commissioners and Deputy Commissioners shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act.

(*3*) Every such note shall bear upon it the name of the town from which it is issued.

Signatures to notes.

10. (*1*) The name of the Head Commissioner, of one of the Commissioners, of a Deputy Commissioner, or of some other person authorized by the Head Commissioner, or by one of the Commissioners, to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery.

(*2*) Names so impressed shall be taken to be valid signatures.

11. The Head Commissioner, the Commissioners, and the Deputy Commissioners shall, in their respective Circles of Issue, on the demand of any person, issue from the office or offices of issue established in their respective circles currency notes of the denominations prescribed under this Act, in exchange for the amount thereof—

Issue of notes for silver by Head Commissioner, Commissioners, and Deputy Commissioners.

(*a*) in current silver coin of the Government of India;

(*b*) in current silver coin made under the Portuguese Convention Act, 1881;

(*c*) in current silver coin made under the Native Coinage Act, 1876, as to which coin a declaration has been made under section 3 of that Act; or

(*d*) in silver bullion or foreign silver coin, not being coin of the descriptions mentioned in clauses (*b*) and (*c*), at the rate of nine hundred and seventy-nine rupees per one hundred and eighty thousand grains of silver fit for coinage, and of the standard fineness prescribed by the Indian Coinage Act, 1870:

Provided that, in all places where there is no Mint of the Government of India, any such Head Commissioner, Commissioner, or Deputy Commissioner may refuse to issue notes in exchange for the bullion or coin receivable under clause (*d*).

12. Any Currency Agent to whom notes have been supplied under section 9 may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in clause (*a*), clause (*b*), or clause (*c*) of section 11.

Issue of notes for silver by Currency Agents.

13. The Governor-General in Council may, from time to time, by order notified in the *Gazette of India*, direct that currency notes, to an extent to be specified in the order, not exceeding one-fourth of the total amount of issues represented by coin and bullion as provided by this Act, shall be issued at such offices of issue as are named in the order, in exchange for gold coin of full weight of the Government of India, or for foreign gold coin or gold bullion, at the rates, and according to the rules and conditions, fixed by that order.

Issue of notes for gold.

14. (*1*) The Head Commissioner, Commissioners, and Deputy Commissioners may require any bullion or foreign coin received under section 11, clause (*d*), or under section 13, to be melted and assayed.

Melting and assaying bullion or coin received for notes.

(*2*) Any loss of weight caused by such melting or assay shall be borne by the person tendering the bullion or coin.

15. (*1*) Every person tendering bullion or foreign coin under section 11, clause (*d*), or under section 13, and depositing it in any office of issue, shall, after the expiration of the time necessary for melting and assaying the same, be entitled to receive for it a certificate signed by the person authorized to issue the notes aforesaid.

Certificates for bullion or coin.

(*2*) The certificate shall—

(*a*) acknowledge the receipt of the bullion or coin,

(*b*) state the amount of notes issued under this Act, or of such notes and cash, to which the holder is entitled in exchange for the bullion or coin, and

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(*c*) state the interval on the expiration of which, if the certificate is presented to the office, the holder shall be entitled to receive that amount.

IV.—Notes where legal tender and where payable.

Notes where legal tender.

16. Within any of the said Circles of Issue a currency note issued from any town in that circle shall be a legal tender for the amount expressed in that note, in payment or on account of—

(*a*) any revenue or other claim, to the amount of five rupees and upwards, due to the Government of India, and

(*b*) any sum of five rupees and upwards, due by the Government of India, or by any body corporate or person in British India:

Provided that no such note shall be deemed to be a legal tender by the Government of India at any office of issue.

Notes where payable.

17. A currency note shall be payable only—

(*a*) at the office or offices of issue of the town from which it has been issued, and

(*b*) in the case of notes issued from any town not situate in British Burma, also at the Presidency-town of the Presidency within which that town is situate.

Notes issued from Currency Agencies to be deemed to be issued from place of issue of circle.

18. For the purposes of sections 16 and 17, notes issued from any Currency Agency shall be deemed to have been issued from the town appointed under section 5 to be the place of issue in the Circle of Issue in which that Agency is established.

V.—Reserve.

Coin and bullion received for notes to be kept as a reserve except amount fixed as herein provided.

19. The whole amount of the coin and bullion received under this Act, and under Act III. of 1871, for currency notes, shall be retained and secured as a reserve to pay those notes, with the exception of such an amount, not exceeding ~~eighty~~* millions of rupees, as the Governor-General in Council, with the consent of the Secretary of State for India, from time to time fixes.

Investment of such amount.

20. The amount so fixed shall be published in the *Gazette of India*, and the whole or such part thereof as the Governor-General in Council from time to time fixes shall be invested in securities of the Government of India.

Appropriation of coin, bullion, and securities.

21. (*1*) The said coin, bullion, and securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said notes; and the said notes shall be deemed to have been issued on the security of the said coin, bullion, and securities, as well as on the general credit of the Government of India:

Provided that any silver bullion or coin received under section 11, clause (*d*), may be sold or exchanged for silver coin of the Government of India, and that any gold coin or bullion received under section 13 may be sold or exchanged for silver coin or bullion, to be so appropriated and set apart instead of the coin or bullion sold or exchanged.

* In s. 19 the word "eighty" has been substituted for the word "sixty" by Act XV. of 1890, s. 1.

(2) For the purposes of this section, silver bullion and coin shall be rated at ninety-eight rupees per eighteen thousand grains of standard fineness, and gold bullion and coin at the rates fixed by the Governor-General in Council under section 13. Act XX of 1882.

22. *Trustees of securities purchased under Act.* [*Repealed by Act XII. of 1891, Sch. I.*]

23. (1) The Head Commissioner may, at any time when ordered so to do by the Governor-General in Council, sell and dispose of any portion of the above-mentioned investment. Power to sell and replace securities.

(2) For the purpose of effecting such sales, the Master of the Mint at Calcutta shall, on a request in writing from the Head Commissioner, at all times sign and endorse the securities, and the Head Commissioner, if so directed by the Governor-General in Council, may purchase securities of the Government of India to replace such sales.

24. (1) The interest accruing due on the securities purchased and held under this Act shall be entered in a separate account to be annually rendered by the Head Commissioner to the Governor-General in Council. Accounts of interest on securities.

(2) The amount of the interest shall, from time to time, as it becomes due, be paid to the credit of the Government of India, under the head of "Profits of Notes Circulation."

(3) An account showing the amount of the profits and of the charges and expenses incidental thereto, shall be made up and published annually in the *Gazette of India*.

VI.—Private Bills payable to Bearer on Demand.

25. No body corporate or person in British India shall draw, accept, make, or issue any bill of exchange, hundí, promissory note, or engagement for the payment of money payable to bearer on demand, or borrow, owe, or take up any sum or sums of money on the bills, hundís, or notes payable to bearer on demand, of any such body corporate, or of any such person: Prohibition of issue of private bills or notes payable to bearer on demand.

Provided that cheques or drafts payable to bearer on demand or otherwise may be drawn on bankers, shroffs, or agents, by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs, or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

26. (1) Any body corporate or person committing any offence under section 25 shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class, be punished with a fine equal to the amount of the bill, hundí, note, or engagement in respect whereof the offence is committed. Penalty for issuing such bills or notes.

(2) Every prosecution under this section shall be instituted by the Head Commissioner, Commissioner, or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which the bill, hundí, note, or engagement is drawn, accepted, made, or issued. Prosecutions.

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VII.—Miscellaneous.

Monthly abstracts of accounts.

27. An abstract of the accounts of the Department of Paper Currency, showing—

(*a*) the whole amount of currency notes in circulation,

(*b*) the amount of coin and bullion reserved, distinguishing gold from silver, and

(*c*) the nominal value of, and the price paid for, the Government securities held by the said Department,

shall be made up monthly by the Head Commissioner, and published, as soon as may be, in the *Gazette of India*.

Supplementary powers of the Government of India.

28. (*1*) The Governor-General in Council may from time to time, by notification in the *Gazette of India*,—

(*a*) fix the amounts (not being less than five rupees) for which currency notes shall be issued:

(*b*) alter the limits of any of the Circles of Issue:

(*c*) declare the places at which currency notes shall be issued:

(*d*) fix the rates, rules, and conditions at and according to which gold may be taken in exchange for currency notes:

(*e*) fix the charge for melting and assaying bullion and foreign coin received for such notes:

(*f*) fix the interval on the expiration of which holders of certificates under section 15 shall be entitled to receive such notes:

(*g*) regulate any matters relative to paper currency which are not provided for by this Act: and

(*h*) revoke or alter any notification previously published under this Act.

(*2*) Every notification under this section shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act:

(*3*) Provided that no notification under clause (*d*) of this section shall have effect until six months have elapsed from the date of its appearance in the *Gazette of India*.

ACT XXI. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND NOVEMBER 1882.

An Act to remove doubts regarding the Madras Forest Act, 1882.

WHEREAS doubts have arisen whether the Madras Forest Act, 1882, is consistent with certain Acts of the Governor-General in Council, and it is expedient to remove those doubts; It is hereby enacted as follows:—

Enactments of the Governor-General in Council not to affect the Madras Forest Act.

1. No enactment of the Governor-General in Council shall affect, or shall be deemed to have at any time contained anything which would affect, the Madras Forest Act, 1882.

ACT XXII. OF 1882.

DEKKHAN AGRICULTURISTS' RELIEF ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND DECEMBER 1882.

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:—

Short title.

1. (*1*) This Act may be called the Dekkhan Agriculturists' Relief Act, 1882; and it and the Dekkhan Agriculturists' Relief Act, 1879, and the Dekkhan Agriculturists' Relief Act, 1881, may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1882.

Commencement.

(*2*) This Act shall come into force on the first day of February 1883.

Definition of "section" and "chapter."

2. In this Act, unless there is something repugnant in the subject or context, "section" means a section, and "chapter" a chapter, of the Dekkhan Agriculturists' Relief Act, 1879, as amended by the Dekkhan Agriculturists' Relief Act, 1881.

New section substituted for section 2.

3. For section 2 the following shall be substituted:—

"2. [See *supra*, p. 432.]

4. After section 2 the following section shall be inserted:—

"2A. [See *supra*, p. 432.]

Amendment of section 3 (Chapter II. to apply to certain suits, of whatever value.)

5. In section 3, clause (*a*), after the word "account," the words, "whatever be the amount or value of the subject-matter thereof," shall be inserted.

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New sections to follow section 15.

6. After section 15, the following sections shall be inserted, namely :—

"15A. [See *supra*, p. 436.]

"15B. [See *supra*, p. 436.]

"15C. [See *supra*, p. 437.]

"15D. [See *supra*, p. 437.]

Amendment of section 19. (Court to act of its own motion.)

7. In section 19, after the word "Court" in both places in which it occurs, the words, "on application or of its own motion," shall be inserted.

Amendment of section 21. (Retrospective operation of section.)

8. To section 21, the words, "passed whether before or after this Act comes into force," shall be added.

Amendment of section 22. (Retrospective operation of section. Court to act of its own motion.)

9. (1) In section 22, after the words, "decree or order," the words, "passed whether before or after this Act comes into force," shall be inserted.

(2) In the same section, after the word "Court," the words, "on application or of its own motion," shall be inserted.

(3) In the same section, for the words, "at any subsequent time," the words, "in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force," shall be substituted.

Amendment of sections 29 and 30. (Court to act of its own motion.)

10. In section 29, first clause, and in section 30, after the word "Court," the words, "on application or of its own motion," shall be inserted.

Amendment of section 44. ("Place" substituted for "taluqa.")

11. In section 44, for the word "taluqa," the word "place" shall be substituted.

Addition to section 44. (Extension of period for showing cause.)

12. To the same section the following shall be added, namely : "The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section."

Amendment of section 47. (Conciliator's certificate available only for one year.)

13. In section 47, for the words, "such certificate as aforesaid in reference thereto," the following shall be substituted, namely : "a certificate in reference thereto obtained by him under section 46 within the year immediately preceding."

Amendment of sections 50 to 53. (Extension of revision to proceedings under Chapter VI.)

14. In sections 50 and 52, for the words and figures, "Chapter II. and Chapter IV.," the words and figures, "Chapter II., Chapter IV., and Chapter VI.," shall be substituted; and in sections 51 and 53, for the words and figures, "Chapter II. or Chapter IV.," the words and figures, "Chapter II., Chapter IV., or Chapter VI.," shall be substituted.

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Amendment of section 54. (Power to refer to High Court under section 617 of Act XIV. of 1882.)

15. To section 54 the following shall be added, namely :—

[See *supra*, p. 446.]

Amendment of section 57. (Powers-of-attorney.)

16. In section 57, after the words "power-of-attorney," the following shall be inserted, namely: "executed and authenticated in such manner as the Local Government may, from time to time, by rule prescribe."

Repeal of part of section 68. (Pleaders, &c., excluded in additional cases.)

17. The last thirteen words of the first clause of section 68 are repealed.

Certain agricultural produce exempted from attachment, &c.

18. After section 73 the following section shall be inserted, namely :—

"73A. [See *supra*, p. 450.]

Limitation of suits.

19. Notwithstanding anything contained in the foregoing sections of this Act, the period of limitation for any suit instituted within two years from the day on which this Act comes into force, and to which, if this Act had not been passed, section 72 of the Dekkhan Agriculturists' Relief Act, 1879, would have applied, shall be the period prescribed by that section.

END OF VOL. II.

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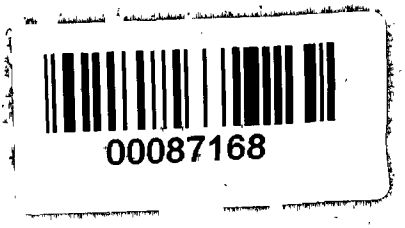

Printed and published by D. E. Cranenburgh, at his "Law-publishing Press," 57, Bow Bazar Street, Calcutta.

Digitized with financial assistance from the
Government of Maharashtra
on 18 July, 2018